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COMMISSION ON HUMAN RIGHTS

Fifty-eighth session

SUMMARY RECORD OF THE 35th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 April 2002, at 10 a.m.

Chairperson: Mr. JAKUBOWSKI (Poland)

later: Mr. LEWALTER (Germany)
(Vice-Chairperson)

later: Mr. JAKUBOWSKI (Poland)
(Chairperson)

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The meeting was called to order at 10.10 a.m.

STATEMENT BY THE CHAIRPERSON

1. The CHAIRPERSON drew the attention of the Commission to a ceremony currently being held at the United Nations in New York to celebrate the depositing of the sixtieth ratification of the Rome Statute of the International Criminal Court with the Secretary-General, as a result of which the Statute would be able to enter into force. He noted the strong support for the International Criminal Court among the members of the Commission, over 75 per cent of which had signed the Rome Statute, and he encouraged all participants to read the statement issued by the United Nations High Commissioner for Human Rights which had been distributed to members.

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2. Mr. OLARA (Special Representative of the Secretary-General on the impact of armed conflict on children), introducing his report (E/CN.4/2002/85 and Add.1) said that the deterioration of the situation in the occupied Palestinian territories was causing the loss of civilian lives, including those of women and children, and a growing humanitarian crisis. He urged the Israeli authorities to ensure that humanitarian laws, human rights standards and, in particular, the Convention on the Rights of the Child were applied in those territories.

3. He was most concerned about the fate of the children abducted from Uganda by the Lord's Resistance Army (LRA) and placed in LRA camps in southern Sudan. There were reports of major military operations currently being launched by the Ugandan People's Defence Force against the camps and he appealed to the Governments of Uganda and Sudan to ensure the protection of the abducted children.

4. He voiced his anxiety concerning allegations of the sexual exploitation of displaced persons in the camps of West Africa, many of whom were children. Such allegations were serious and should be investigated thoroughly and any persons responsible should be held to account. His office was working to put preventive measures in place to ensure the elimination of such practices and abuse.

5. Finally, he noted that, since the previous session of the Commission, the Optional Protocol to the Convention on the Rights of the Child had come into force. Such victories must be translated into tangible action on the ground to provide protection for children and to identify ways of monitoring and reporting on the protection and well-being of the child.

6. Mr. PETIT (Uruguay), Special Rapporteur on the sale of children, child prostitution and child pornography, said that it was not possible to summarize all his activities carried out during the year in a few minutes and he preferred to submit his written report (E/CN.4/2002/88) and a brief written statement in Spanish. The translations into English would be available on Friday 12 April. The lack of time available to the Commission for a proper discussion of the

various issues suggested that the human rights system was experiencing difficulties which called for new action, especially in the face of the multiple expressions of intolerance and violence which were still occurring throughout the world. He thanked the Commission for entrusting him with its mandate.

STATEMENT BY THE MINISTER FOR FOREIGN AFFAIRS OF NIGERIA

7. Mr. LAMIDO (Nigeria), after paying a tribute to the United Nations High Commissioner for Human Rights and congratulating the people and Government of Switzerland on the decision to join the United Nations, said that the current session of the Commission provided the opportunity not only to evaluate the state of human rights throughout the world but also to reaffirm the international community's commitment to the various human rights instruments, a commitment which was essential if the Millennium Development Goals were to be achieved.

8. Nigeria was, perhaps, a case study in how a Government could, with faith and commitment, make a positive change to its human rights record almost overnight. His Government had taken action to ensure that Nigeria not only complied with the provisions of the human rights instruments to which it was a party but would also be able to accede to and ratify all other instruments within a short space of time. Several human rights bills were currently before the National Assembly, with a view to bringing various provisions into domestic legislation. The Government had also approved the ratification of the Optional Protocols to the Convention on the Rights of the Child on involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. In conjunction with Nigeria's signature and ratification of the Convention itself, the Optional Protocols would ensure that Nigerian children would grow into adulthood with their human rights fully guaranteed.

9. Up to a few days previously, many Governments and human rights non-governmental organizations (NGOs) had been expressing concern over the case of a woman who had been sentenced to death in Nigeria. Some Governments had appealed for clemency, while others believed that Nigeria should be cited for gross violation of human rights. His Government's belief in the integrity of the judicial system and the rule of law had been vindicated, however, since the accused person had been set free through due process. He assured the Commission that Nigeria would continue to honour its obligations under the various human rights instruments. At the same time, he emphasized his Government's determination to uphold the supremacy of the country's Constitution, which guaranteed the federating states of Nigeria the authority and freedom to make laws in specific areas.

10. Another area of concern to Nigeria, as indeed to all developing countries, was the right to development. Without education, health, employment or housing, civil and political rights had little significance. However, the capacity of many developing countries to promote the right to development for their citizens was gravely constrained by a crippling debt burden, poverty, diseases including HIV/AIDS, tuberculosis and malaria and inadequate access to technology.

11. In Nigeria's own case, the situation was exacerbated by the continued refusal of some developed countries to repatriate Nigerian funds illicitly transferred to their banks, in spite of bilateral and multilateral appeals. It was both a human rights and a moral issue; the Commission should take the lead in the fight to repatriate those funds to their countries of origin.

12. With regard to terrorism and its impact on the promotion and enjoyment of human rights throughout the world, he said that his Government did not subscribe to the perception that every action by a people in the pursuit of its legitimate needs and aspirations should be dismissed as a manifestation of terrorism. The quest for the enjoyment of fundamental freedoms and universally accepted civil and political rights should not be construed as terrorist acts. On the contrary, any oppression of those seeking to enjoy such freedoms and rights amounted to an act of terrorism against such people. The dynamics of terrorism should be judged not only through the prism of materialism but through an enhanced knowledge of other peoples' cultures and through tolerance of other civilizations.

13. From its experience of the colonial struggles in the African continent, his people were aware that armed resistance was the only recourse available to some oppressed peoples in pursuit of their legitimate right to self-determination. While making it abundantly clear that his Government rejected terrorism in all its manifestations, believing that international law should govern the behaviour of all actors, he insisted that the conditions that fostered terrorist acts deserved the attention of the international community. The principles of justice and equity in inter-State relations should be at the forefront of concern. Only thus could a world of peace and security be created.

14. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance had moved forward the international community's understanding of the causes, origins and thriving legacies of racism. At the Durban Conference, slavery and the slave trade, especially the transatlantic slave trade, had been recognized to be a crime against humanity. Many people continued to be victims of racism, however, the campaign against which would continue to be a vital task for the Commission. His Government would work assiduously with other countries to realize the Durban objectives throughout the world. It had set up a national committee comprising government officials, representatives of the private sector, academics and NGOs to study the outcome of the Conference and make recommendations on aspects relevant to the national circumstances.

15. His delegation wished to place on record its profound gratitude to the Office of the High Commissioner for Human Rights (OHCHR) for organizing the first African Regional Dialogue on Human Rights, the African Union and the New Partnership for Africa's Development Conference, held in November 2001. The Conference had agreed, inter alia, that one of the OHCHR priorities should be to engage the international financial institutions in a dialogue that would facilitate the elimination of Africa's debt burden and create smart partnerships and programmes for the consolidation of democracy, good governance, the rule of law, human rights and the eradication of poverty in Africa. There would be further dialogue on critical human rights issues in the continent and projects based on the outcomes of the Regional Dialogue and the Durban Programme of Action would be developed. His delegation looked forward to seeing such lofty goals pursued with vigour for the benefit of the developing countries.

16. Lastly, he commended the success of the OHCHR project formulation mission to his country following on the heels of the visit in 2001 by the needs assessment team charged with the responsibility of determining how OHCHR should render technical assistance and advisory services to Nigeria with a view to strengthening national capacity in the field of human rights

and fostering democratic processes in the country. He was confident that the mission and the various institutions visited in Nigeria had benefited immensely from the exchange of views and that practical evidence of their collaborative efforts would shortly be forthcoming.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 10) (continued) (E/CN.4/2002/50, 51 and Add.1, 52 and Add.1, 53, 54, 55 and Add.1, 56, 57, 58 and Add.1, 59 and Corr.1, 60 and Add.1 and 2, 61, 62, 132, 133, 141, 148, 161 and 171; E/CN.4/2002/NGO/3, 4, 6, 24, 37, 48, 59, 66-69, 92, 121-123, 179-181 and 198-200; A/55/342; E/CN.4/Sub.2/2001/13)

17. Mr. WARIKOO (Himalayan Research and Cultural Foundation) said that, due to globalization, the economic, social and cultural rights of people in developing countries were under greater stress, inhibiting the realization of their right to development. Recent studies had shown that the transition from welfare State to market-driven economy had led to the dislocation of skilled and unskilled workers, causing acute unemployment. In Afghanistan, all social and economic structures had totally collapsed under the Taliban regime, and terrorism and religious extremism in Jammu and Kashmir had had a similar effect.

18. Mr. AHSAN (Interfaith International) said he wished to highlight the plight of the people of the Sindh province in Pakistan, whose economic, social and cultural rights continued to be violated by the ruling ethnic majority, the Punjabis. Sindh Province had an agrarian economy and was therefore reliant upon water from the river Sindh, but that water was being pumped to the Punjab, seriously threatening the Sindh farmers' livelihood. There were also limited employment opportunities for the Mohajirs and Sindhis in their native province, as ethnic Punjabis were brought in to staff Government and semi-Government organizations and local and foreign corporations in Sindh. There were also examples of discrimination, such as the Oil and Gas Development Corporation which employed only 230 people from Sindh out of a total of 730 staff in the region. The Commission should urge the Government of Pakistan to take steps to replace the current Constitution by one that would do justice to all the ethnic and religious minorities in Pakistan.

19. Mrs. ROBERT (Médecins du Monde) said, according to the Committee on Economic, Social and Cultural Rights, the right to health was a fundamental human right. Nevertheless, her organization regularly observed discrimination based on ethnic origin, sex or religion in access to health care; social or cultural practices that breached the principle of bodily integrity and sexual freedom and the denial or deliberate distortion of information vital to health. Despite the many obstacles facing States in achieving the realization of the right to health, they were duty-bound to protect and implement it by the instruments they had ratified. Another problem, related to globalization, concerned access to medication, with many forms of treatment being inaccessible to the vast majority of people. She thus urged the Commission to appoint a special rapporteur on the right to health and to establish a working group to consider the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights which would make those rights justiciable.

20. Mr. GUPTA (International Institute for Non-Aligned Studies) said that, without universal education, medical care and population control, the necessary conditions could not be established for the third-world countries to break out of the vicious circle of poverty into which they had

been driven by colonialization. Moreover, if girls received no education and women were not included in schemes to free them from male domination, they could be unable to contribute to the creation of a modern economic society, as was the case in many countries of Asia. Disadvantaged sectors of the population needed affirmative action and resources in order to participate in economic growth, social management and political governance. The developed countries, which had taken three centuries to create the economic infrastructure to support the economic, social and cultural rights of their populations, should help the third-world countries to move ahead with similar development and social progress, lest the growing inequalities produce more conflict and global terrorism.

21. Mr. FERNANDEZ (International Organization for the Development of Freedom of Education) said that, in recent years, his organization had tried to encourage Governments to reflect on the scope and implications of the right to education. It had recently prepared a report on freedom of education which examined the situation in 85 countries (covering 87 per cent of the world population), investigating the existence or otherwise of non-governmental or private schools and the type of financing provided by the State. One general conclusion was that the countries with high levels of freedom were also those with high levels of education, according to United Nations Development Programme (UNDP) indices.

22. Mr. TCHRANI (Organization for Defending Victims of Violence) said that the globalization process should not be appropriated by the rich to the detriment of the poor, but should represent an opportunity for all. There were currently more than one and a half billion people living in poverty throughout the world and, although the decision by the General Assembly to proclaim the United Nations Decade for the Eradication of Poverty was a welcome one, words had to be translated into actions. The key was education: poverty was the result of a lack of access to education which in turn caused poverty, a vicious circle that had to be broken. In that connection, his Organization was deeply concerned that there were still States which did not recognize development as a right, but looked upon it as a concession.

23. Ms. SOMSWASDI (Asia Pacific Forum on Women, Law and Development) said that research in the Asian region had shown that current economic policies and programmes under the World Trade Organization (WTO) agreements had had devastatingly negative impacts on the people and their environment. The many disasters that had occurred in areas where large scale commercial and development projects had been implemented by transnational corporations had affected women and girls most severely because of their lower status within society and many women had to bear the financial, physical, emotional and psychological costs more than ever before. Since women's participation in decision-making remained limited they had also increasingly become the powerless victims of development strategies. Social and environmental concerns should not be neglected for the sake of economic growth. Her organization thus called on the Commission to increase its efforts to pressure international trade institutions to recognize the primacy of human rights over trade benefits.

24. Ms. SOLON (International Centre for Human Rights and Democratic Development) said that the adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights, providing for an individual complaints procedure would not be a revolutionary leap forward, but simply the logical continuation of a process taking place at the international,

regional and national level. There was already a clear majority of States members of the Commission that had agreed to a complaint mechanism within a regional system. At the level of the United Nations system, such a procedure was utilized by the International Labour Organization (ILO), in connection with labour rights, and by the recently adopted Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The Commission should thus establish an open-ended working group to proceed towards the early adoption of an optional protocol, with adequate funds to ensure that it had access to the required technical expertise and administrative support.

25. Ms. FRANSISKA (Asian Legal Resource Centre) said that her organization had repeatedly drawn the Commission's attention to the problems of food security in Myanmar and the absence of the fundamental rights to food and work there and had challenged the legitimacy of the military Government's claims to be working for agricultural and social development. The recent arrest of Mr. Solai Tun Than, an eminent agricultural scientist, strengthened the validity of its contentions. On his retirement after 40 years of work in State institutions, Mr. Than had founded an NGO for agricultural development in the remote hill country of Myanmar. Though internationally renowned, the NGO was systematically obstructed by the Government of Myanmar and, when Mr. Than had made a public protest against the Government, he had been sentenced to seven years' imprisonment at the age of 74. In Myanmar, where any show of independence was seen as a potential threat to the Government, no rights were guaranteed and the statistical indicators of agricultural expansion and economic progress projected by the State agencies were utterly specious.

26. Ms. LOPEZ ORTIZ (Colombian Commission of Jurists) said it was vital that the Commission should move forward towards the adoption of an optional protocol to the International Covenant on Economic, Social and Cultural Rights. Millions of people did not enjoy even the minimum rights. The system therefore needed strengthening. Some Latin American Governments had not only not made any progress but had actually retrogressed. In Colombia, the Government had, in 2001, sought the approval of Congress for a constitutional reform cutting the education and health budgets for the next few years. The effect would be disastrous, especially in certain regions of the country. The Committee on Economic, Social and Cultural Rights had recommended that the Government of Colombia should take steps to reduce the extreme social inequality in its country. It was clear from that example that the Covenant needed to be on a par with the other human rights treaties and she trusted that the Commission would establish an intersessional working group on the subject of an optional protocol that would be open to NGOs and the social actors.

27. Ms. MJOMBE (Pax Romana) said that the outcome of the International Conference on Financing for Development had been very meagre, when compared with the amounts spent on defence worldwide. The contributions by the European Union and the United States of America, totalling about US$ 12 billion, did not cover the cost of either the health or the primary education elements of the Millennium Development Goals, each of which was estimated at about US$ 15 billion a year. In 2000, the global outlay on defence had totalled about US$ 825 billion, whereas Overseas Development Assistance (ODA) had totalled about US$ 53 billion. The contrast was quite unacceptable, since it increased the growing inequalities already so pronounced as a result of globalization.

28. Hunger and malnutrition coexisted with a surplus of food grain. WTO must give up its trade-centred regime and adopt a rights-based approach, since the lack of adequate food not only led to death but also formed part of a vicious cycle of several generations of people with underdeveloped brains. In that context, her organization welcomed the scrutiny by the Sub-Commission of the balance between the rights protected by the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement and the broader human rights of people and communities.

29. Her organization welcomed the report of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (E/CN.4/2002/61) and urged her to review the policies and practices of a number of Asian countries. The debris from the World Trade Center buildings in New York was currently being dumped in India.

30. Given the limitations to financing for development, there must be great concern about the goal of "education for all", especially for the marginalized. School fees had increased dramatically in many countries and many poor students were forced to discontinue their studies. Meanwhile, some States, such as Japan and India, were engaged in tampering with their history textbooks. In that connection, she noted that people in countries whose Constitutions recognized the fundamental right to education had begun to resort to legal remedies. The Special Rapporteur on the right to education should explore ways and means of making education more widely available and reducing the large number of school dropouts.

31. Ms. LERUINDA (Association Tunisienne pour L'Autodéveloppement et la Solidarité) said that her organization existed to help people in disadvantaged rural areas in the north of Tunisia through participatory rural development projects. It worked with other NGOs and with institutions that financed microprojects through the NGOs. Although the poverty rate had been brought down to about 4 per cent of the population, experience showed that solidarity and the struggle against poverty were of crucial importance in the promotion of human rights. The Tunisian Parliament had recently adopted an amendment to the Constitution, placing greater emphasis on the universal values of tolerance and solidarity.

32. Poverty, illiteracy and disease persisted throughout the world. The 20 per cent richest people received 86 per cent of total world income, whereas the 20 per cent poorest received less than 1 per cent. The new world order had brought about no improvements, despite all the promises. The root of the problem was the flagrant lack of solidarity between the rich countries and the poorer countries. The political will for greater justice and equity was lacking. Her organization called on States and regional and international institutions to increase their financing for development, at least to the level of the target of 0.7 per cent of gross national product (GNP). She also urged support for the Tunisian delegation's proposal, adopted by the General Assembly, that a world solidarity fund be established.

33. Ms. DE VASQUEZ (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that political repression in its grossest forms, was closely linked to the violation of economic, social and cultural rights to the extent that the spiral of human rights violations originated in situations of so-called "structural violence". A shortage of work, food,

education, health and well-being constituted as serious a violation of individual rights as torture itself. Those responsible for the major economic policies of the International Monetary Fund (IMF) and the World Bank must not close their eyes to the fact that, in Latin America at any rate, they not only deepened poverty but also incited countries to introduce political repression of the most ruthless and cruel kind. They should incorporate human rights concerns into their policies and bring their formidable human, material and technical resources to bear on improving the well-being of all humankind and not just a tiny privileged minority.

34. Ms. BIONDI (International Confederation of Free Trade Unions (ICFTU)) said that the union movement had always lobbied strongly for the recognition of the link between trade and human rights. Although the WTO failure to commit itself to addressing the relationship between trade and core labour standards was disappointing, better results had been achieved in the area of access to medication for developing countries. ICFTU would continue to press for public services, especially education and health, to be exempted from the General Agreement on Trade in Services (GATS) and for WTO to be made more democratic and gender-sensitive. WTO should also open up its mechanisms, including disputes settlement and trade policy reviews, to public scrutiny and involvement and achieve the equal participation of developing countries.

35. The Commission needed to reflect on the crisis of legitimacy faced by the international system at a time of accelerating globalization. While the ILO promoted collective bargaining as a fundamental right in Central and Eastern Europe, the World Bank had been advising countries to revise labour codes in order to restrict those very rights. The Food and Agriculture Organization of the United Nations (FAO) encouraged support for domestic industries in the poorest African countries, while the IMF criticized the same policies as being inward-oriented. WTO was set on a course of trade and investment liberalization, completely disregarding social issues, but every United Nations meeting concluded that poverty reduction, better living standards and respect for human rights should be the international priority.

36. ICFTU urged OHCHR to follow closely the debate in the newly launched ILO World Commission on Globalization, which would seek alternative answers in a world where Governments and people had lost control of the process. It was to be hoped that the World Commission would find ways of changing the globalization process so as to reduce poverty and unemployment and foster growth and sustainable development.

37. Mr. COLÁS (Liberal International) said that international organizations and human rights activists in Cuba had produced reports identifying violations of the Cuban people's economic, social and cultural rights. Although Cuba boasted of its record on education, 78 teachers had been dismissed in 2001 and threatened by the political police for not subscribing to communist ideas. Two directors of an independent college had been detained for trying to promote free education and the right of parents to educate children in accordance with their own beliefs. Books intended for independent libraries were confiscated by the political police and independent librarians were prosecuted.

38. Economic rights were not respected in Cuba either. Peasants were not at liberty to produce or sell their products. The State regulated the market and imposed prices. Machinery and land were confiscated. Workers could not form trade unions and had to support the regime.

Medical services were theoretically open to all but, hospitals caring for government officials and tourists were well equipped, whereas those for the general population often lacked essential requirements.

39. Prostitution, domestic violence and other social evils in Cuba were the result of a totalitarian State which had restricted individual freedom, destroyed the social fabric and stifled the country's development. The Government justified human rights violations on the pretext of foreign aggression, without recognizing its own political and economic failures and the poverty to which it had reduced the country.

40. Mr. PARY (Indian Movement "Tupaj Amaru") said that the deteriorating global situation of economic, social and cultural rights, which threatened the survival of peoples and nations, particularly indigenous peoples, required the countries of the North and the South to reflect on the ultra-liberal policies and structural adjustment programmes promoted by the Bretton Woods institutions. Those policies had caused chaos and disorder and allowed vital national resources to be ruthlessly exploited by transnational corporations which were the conveyor belts of globalization.

41. Despite the promises contained in the Millennium Declaration, poverty was on the increase, affecting more than 40 per cent of the world population and millions, including children, continued to die from hunger and illness. More than 80 per cent of the rural poor in the developing countries and more than 60 per cent of those in the Latin American and Caribbean countries were indigenous peoples. In all, more than 180 million people in Latin America lived in poverty or extreme poverty.

42. In a period of globalization, the external debt burden had become a mechanism for the unscrupulous expropriation of natural resources by the powerful transnational corporations. Furthermore, corruption, a serious economic crime, was commonplace at the highest levels of Governments, political parties and armed forces. The existing, profoundly unfair, international economic system must be reformed in the name of human rights.

43. Mr. DELIUS (Society for Threatened Peoples) said that South-East Anatolia, the Kurdish area of Turkey, had become a devastated region as a result of the armed conflict between the Turkish State and the radical Kurdish Workers' Party (PKK). More than 2.5 million Kurds had been displaced and 3,428 villages had been partially or wholly destroyed by the Turkish army, while the basic infrastructure and agriculture had been severely affected. Despite the stated intention of both parties to seek a peaceful political solution, many parts of the region remained a war zone.

44. Reconstruction was difficult due to apparent official reluctance to repopulate rural Kurdish areas. Many refugees remained in shanty towns and housing estates in the cities where they were deprived of basic services such as shelter, work, health and education and were discriminated against and even threatened by the majority population. Refugees who had been granted permission to return home by the civil authorities were turned back by village guards who had occupied their lands and houses or by the gendarmerie. The Commission should urge the Turkish Government to lift the state of emergency in Kurdish areas and allow the return of refugees and the reconstruction of villages.

45. Kurds applying for optional Kurdish language courses in schools and universities were harassed, and, the Turkish National Security Council had characterized petitions for Kurdish language courses as separatist activities. Despite the constitutional amendments of October 2001 which would permit Kurdish language broadcasting, the Kurdish Gun Radyo studios had been raided by the police, who had seized their equipment. The Radio and Television High Council had decided on 11 February 2002 to stop Gun T.V. from broadcasting for 365 days for playing music videos with Kurdish lyrics, on the grounds that such broadcasting incited to ethnic separatism. The Commission should urge the Turkish Government to implement the new constitutional guarantees relating to the Kurdish language.

46. Ms. MURPHY (Women's International Democratic Federation (WIDF)) said the international community should pay more attention to the plight of the Kurds living in Turkey, Iran, Iraq and Syria, whose very existence was denied and whose rights were often violently suppressed. In Turkey, students who petitioned to study Kurdish as an optional course, like mothers who demanded education in Kurdish for their children, were arrested and tried in State security courts. Kurdish women unable to speak Turkish could not consult a doctor or deal with the bureaucracy.

47. Women played an important role in cultural development and Kurdish women wanted to protect their culture and pass it on to the next generation. The Turkish Government continued to deny that non-Turkish ethnic groups existed in Turkey and even tried to force families to change children's Kurdish names to Turkish ones. Such attempts to curb social and cultural rights were anti-democratic and she called upon the Commission to take note of the situation of the Kurdish people and other peoples in similar circumstances and to send an observer to Turkey to investigate it.

48. Ms. LHADON (International Fellowship of Reconciliation (IFOR)) said that, after 50 years of Chinese administration, Tibet remained one of the poorest regions in the world and Tibetans' rights continued to be violated. Chinese economic policy enriched the Chinese Government and encouraged Chinese settlement in towns and cities, while the plight of the vast majority of Tibetans in rural areas was ignored. The increasing disparity between Tibetans and Chinese settlers was raising tensions.

49. High fees and the increasing use of Chinese as a language for education meant that most Tibetan children were not educated beyond primary school. The illiteracy rate for Tibetans was at least 60 per cent, the use of the Tibetan language in education had been downgraded and, in 1997, the Chinese authorities had announced that they were beginning to teach Chinese to Tibetan children in the first grade.

50. High fees and the lack of Tibetan medical staff restricted access by Tibetans to medical care and the potential for an HIV/AIDS epidemic, given the absence of testing, treatment or education programmes, was serious. Chinese birth-control policy which favoured the sterilization of women rather than safe-sex practices, was also a cause for grave concern. Malnutrition was widespread among Tibetan children, particularly in rural areas, resulting in high rates of stunted growth.

51. Many Tibetans did not have adequate housing, and, in rural areas in particular, they lacked basic services such as water and electricity. New housing was designed to meet the needs of the growing Chinese population, not those of the Tibetan people.

52. Unemployment amongst Tibetans remained high because Chinese settlers were preferred for jobs, many of which required proficiency in Chinese and received more pay for the same work. Other fundamental workers' rights, including the right to organize and to bargain collectively, were denied in Tibet.

53. She urged the Commission to place on record the failure of the Chinese authorities to protect in Tibet the basic rights enshrined in the International Covenant of Economic, Social and Cultural Rights.

54. Mr. SANCHEZ (American Association of Jurists) said that, at the recent World Social Forum, his organization had argued before an international people's tribunal for the abolition of the foreign debt of the poor countries, which was one of the major obstacles to the full enjoyment of economic, social and cultural rights. Corruption, embezzlement and misuse of funds on the part of the Governments of rich countries, public and private financial institutions, numerous debtor country Governments and individuals together with usurious rates of interest and scandalous repayment arrangements had greatly exaggerated that burden.

55. The elites of the North and the South had conspired together to violate the rights of the peoples of the third world, forcing them to live in inhuman or degrading conditions which threatened their very existence. The exploitation of the peoples of the third world was a crime against humanity. The debtor countries should refuse to repay their foreign debt, which was illegitimate and had, in any case, been more than repaid in usurious interest rates and payments over many years.

56. Mr. MENDOZA (International League for the Rights and Liberation of Peoples) said that the Puebla-Panama Plan for Economic Development had been agreed to by the Governments of Mexico and the Central American countries to promote trade and the movement of persons and capital by developing a major transportation and industrial corridor. The Plan would have a negative effect on lands belonging to indigenous peoples since it denied them the right to manage their natural resources for themselves and could threaten their very existence. Indigenous lands would be expropriated and the peoples themselves used as a source of cheap labour.

57. At the Xelajú forum in December 2001, more than 300 associations had met to define grass-roots alternatives to the Plan and to the future Free-Trade Agreement of the Americas (FTAA) and had rejected all imposed globalization. They had also accused the Mexican Government, which had designed the Plan, of being a proxy for the United States.

58. In some parts of the world there were countries where the Government was unable to implement economic, social and cultural rights because of external interference in the form of embargos or sanctions. The most flagrant case was that of Cuba, which had been subject to an economic embargo on the part of the United States since 1960, seriously affecting the economic,

social and cultural development of its population. Countries like Cuba and Iraq and others which refused to toe the line of a certain great Power were cruelly punished and their peoples suffered the consequences of their independence of mind.

59. Ms. FARHA (Habitat International Coalition) said that human rights defenders often found themselves in conflict with State authority. Somewhat ironically, however, as the negative effects of globalization made themselves felt, many NGOs found themselves calling for a return of State authority since NGOs and States could offer each other mutual assistance in protecting economic, social and cultural rights in the context of globalization.

60. Economic, social and cultural rights were essential guarantors of justice and civilization and could also be used to defend the legitimacy and authority of the State, and make a compelling legal case against forces which called on States to abandon their regulatory authority to manage markets. Governments, especially those of developing countries, must develop greater interministerial coordination and practical understanding of the self-preservation options offered by economic, social and cultural rights and the treaty obligations regarding them. NGOs should share experience to improve people's living conditions and enhance cooperation with Governments to promote those basic rights.

61. She urged States to improve intergovernmental and especially intragovernmental coordination to assert their economic, social and cultural right obligations, implementation of which was threatened by global social and economic policies seeking to undermine State authority.

62. The CHAIRPERSON said that, some time earlier, he had given the floor to the representative of Anti-Slavery International. In fact, however, it had been the representative of Liberal International who had spoken - out of turn and without the permission of the Chair - in violation of rule No. 43 of the rules of procedure. He would bring that matter to the attention of the Bureau and urged all participants to comply with the Commission's rules of procedure so as to avoid delays and other problems.

63. Mr. FERNANDEZ PALACIOS (Cuba), speaking on a point of order, thanked the Chairperson and the Secretariat for their impartial attitude and efforts to ensure that such irregularities were not repeated by others who might seek to abuse the Commission's patience.

64. Mr. KIRKYACHARIAN (Movement against Racism and for Friendship among Peoples) said he regretted that the Kurdish people of Turkey were denied the right to be educated in their own language and were accused of separatism for demanding that right. Many students and academics who had signed a petition asking that Kurdish be taught had been arrested and some even tortured. The Pontic ethnic group, of Greek origin, which lived along the shores of the Black Sea and spoke a very ancient Greek dialect, was also discriminated against.

65. His organization, which supported all those who, in all countries, sought to combat hate and xenophobia and to promote a dialogue amongst cultures, thought it was high time that the Turkish authorities revised their concept of a homogeneous State and recognized its diversity. Educational systems should not be used to eliminate diversity; on the contrary, differences should be cherished as the building blocks of humankind as a whole.

66. Ms. SHAUMIAN (International Institute for Peace) said that she would not make an oral statement. Her written presentation, which was being distributed, called upon the international community to implement the many international human rights instruments so as to promote the interests of the world's peoples.

67. Mr. BARNES (Indigenous World Association) said that the rights of the indigenous peoples of Alaska continued to be denied. He called on the Commission to support them in asserting their right to land title, to control their resources and to an end of their economic domination by a foreign minority. As the United States itself had admitted, Alaska had not belonged to Czarist Russia and the 1867 Treaty of Cession could not grant title or dominion to the United States. He, consequently, demanded the exercise of his people's economic, social and cultural rights, under their already recognized political status.

68. Having paid tribute to the Government of Cuba for resisting foreign domination and maintaining sovereignty over its lands and resources, he called upon the Commission to adopt once again a resolution to examine situations such as that of Alaska so that the wrongs of colonization could be remedied.

69. Mr. Lewalter (Germany), Vice-Chairperson, took the Chair.

70. Mr. BONDYOPADHYAY (International Council of AIDS Service Organizations) said that violations of the rights of sexual minorities in India went largely unnoticed. NGOs and community-based organizations which had heeded the Government's call to become involved in the work of the National AIDS Control Policy faced harassment from the police on a daily basis, and outreach workers were regularly beaten, blackmailed, extorted, threatened and sometimes even sexually assaulted. That impeded HIV intervention work and represented a clear violation of the rights to health, life, personal security and dignity.

71. The Indian Government allowed that harassment to occur because it did not recognize the human rights of homosexuals, lesbians and transgendered persons. Sodomy continued to be a criminal offence under section 377 of the Penal Code. Four HIV workers in Lucknow had recently been arrested, tortured, made to drink sewer water, refused medication and regularly abused and humiliated. They had been detained for 47 days and charged with conspiracy to spread sodomy. As their lawyer, he had been kept under constant observation and threatened by the police. The privilege of client-lawyer relations, a feature integral to a free judiciary, had been regularly violated. During the trial, the State's anti-homosexual position had been reinforced by the silence of the National AIDS Control Organization (NACO) which had been unwilling to defend its own policy.

72. Given the insensitive, ineffective and chaotic lower judiciary in India, it was impossible to take action against violations of sexual minority rights. Section 377 meant that victims were often criminalized themselves, but as it was difficult to prove a violation of section 377, other charges, unrelated to sexuality, were often used against men who had sex with men.

73. He urged the human rights mechanisms of the United Nations to hold the Government of India responsible for both its actions and its inaction, and to call upon it to ensure that the human rights of all citizens were respected, protected and promoted. The discrimination, arbitrary arrest, invasion of privacy, torture and criminalization of sexual minorities must end.

74. Ms. JALAL (International Human Rights Law Group) said that she welcomed the Secretary-General's report on women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing (E/CN.4/2002/53). She urged the Commission to pay special attention to women in conflict and post-conflict situations and to send special missions to examine the plight of women in Afghanistan and Sierra Leone.

75. In Sierra Leone, the Constitution recognized that, under customary law, women were not allowed to own property in most parts of the country. If a woman separated from her husband or became a widow, she had to leave the land owned by her husband or marry one of his relatives. There was a great need to revise inheritance and property rights to facilitate the access to and ownership of land for millions of women who had lost their husbands in the war.

76. In Afghanistan, over 20 years of armed conflict and natural disasters had affected the rights of Afghan women to own property and land. It was essential that women, particularly those who were single, widowed or disabled, should not be left out of the reconstruction process, but should be guaranteed equal rights and access to and ownership of property. Many widows and female-headed families were returning to Afghanistan and needed help to reintegrate into society.

77. She urged the international community to support women's rights in Afghanistan and to facilitate technical support to Afghan lawyers and judges so that Afghan laws could be brought into line with internationally recognized human rights for women.

Statements made in exercise of the right of reply

78. Mr. ISCAN (Observer for Turkey) said his delegation rejected the unsubstantiated allegations made by the representative of the Greek Cypriots. He drew the Commission's attention to a letter dated 10 December 2001 addressed to the High Commissioner for Human Rights (E/CN.4/2002/130) which contained his Government's views on the question of Cyprus.

79. The United Nations peacekeeping force had been deployed in Cyprus since a Greek Cypriot attack on the Turkish Cypriots in 1963. The Greek Cypriots had staged a coup in 1974, aimed at ethnically cleansing the Turkish Cypriots from the island, and that had led Turkey to intervene in accordance with its obligations as a guarantor Power. That intervention had ensured the most fundamental human right of the Turkish Cypriots, namely, the right to life.

80. The Turkish Cypriots simply wanted to live in dignity, free from the fear of being massacred. At the initiative of the Turkish Cypriot leader, negotiations were being held between the two parties. However, the representatives of the Greek Cypriots continued unabated their vicious campaign of aggression.

81. Mr. REYES RODRIGUEZ (Cuba) said that the response of the observer for the United States of America to the report by the Special Rapporteur on the right to food (E/CN.4/2002/58) had revealed once again the double standards that country applied to international cooperation in the field of human rights.

82. Official documents showed that steps had been taken by the United States Government in 1960 that were explicitly designed to cause hunger and despair in Cuba and bring about the collapse of its Government. According to a recent study by the American Association for World Health, many Cuban people were suffering from serious malnutrition and health problems as a result of the United States embargo. His Government had to spend vast sums of money to overcome the restrictions imposed by the blockade on the trade in food.

83. The United States had further violated the right to food by conducting biological weapons attacks, causing damage to agricultural development. The Central Intelligence Agency (CIA) had been responsible for infecting Cuban livestock with Newcastle disease in 1962 and African swine fever in 1971. In 1981, the American-based terrorist organization Omega 7 had introduced dengue fever into Cuba, causing the death of 158 people.

84. Mr. BENCHERIF (Algeria) said the International Federation for Human Rights had once again felt obliged to give Algeria some lessons in economic development. That NGO did not deserve a place at the Commission. It had defended all colonial policies in Africa and had justified all massacres of colonial peoples between 1922 and 1974. It had never recognized the right of colonial peoples to protection under the Universal Declaration of Human Rights and it had never condemned apartheid. He would be interested to know its views on the exploitation of developing countries' primary commodities.

85. Ms. MINA (Observer for Cyprus) said that the statement by the observer for Turkey, which had contained false and defamatory information, had been an attempt to politicize the work of the Commission, thereby making it difficult to conduct a reasonable debate.

86. Mr. KAMARA (Sierra Leone) said his delegation rejected the unfounded allegations made by the International Human Rights Law Group. His country was one of the few States in Africa in which the rights of women were observed. Many women occupied high-level posts in the public service and many owned their own businesses and property. Among the candidates standing for president or vice-president in the forthcoming elections, there were five women.

87. Mr. SOLOMON (Observer for the United States of America), replying to the representative of Cuba, said that the Cuban Government was solely responsible for the shortage of food in its country.

88. Mr. Jakubowski (Poland) resumed the Chair.

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:

(a) TORTURE AND DETENTION

(b) DISAPPEARANCES AND SUMMARY EXECUTIONS

(c) FREEDOM OF EXPRESSION

(d) INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

(e) RELIGIOUS INTOLERANCE

(f) STATES OF EMERGENCY

(g) CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

(agenda item 11) (continued) (E/CN.4/2002/5, 7, 8, 12, 63-65, 66 and Add.1, 67, 68, 69 and Add.1, 70, 71, 72 and Add.1-3, 73 and Add.1, 74 and Corr.1 and Add.1 and Corr.1 and Add.2, 75 and Add.1 and 2, 76 and Add.1, 77 and Add.1 and 2, 78, 79, 121, 122, 124, 125, 130, 134, 137, 143, 144, 152, 154, 155, 157, 162, 163 and 170; E/CN.4/2002/NGO/1, 9-11, 16, 18, 19, 25, 30, 38, 42, 49, 53, 70-79, 100, 104, 106, 120, 126, 131-141, 144, 148, 162, 164, 177, 182-187 and 193; A/56/181 and 253; A/RES/56/143; E/CN.4/Sub.2/2001/6 and Corr.1 and 31)

89. Mr. AKRAM (Pakistan) said that the promotion and protection of human rights was the central pillar of his Government's policies. The efforts made to promote development, eradicate poverty, generate employment and address the basic macroeconomic issues needed to revive the economy, which had been on the brink of collapse, had been relatively successful.

90. His Government had focused on the promotion and protection of civil and political rights. An ambitious plan to devolve power to the grass-roots level had been successfully completed. All districts currently had governments run by the directly-elected representatives of the people. In those governments, 33 per cent of all seats were reserved for women, a measure described by the Secretary-General as a revolutionary one.

91. Elections at the provincial and federal levels would take place in October 2002. The office of the Chief Election Commissioner had been made independent for the first time in the country's history. In the federal legislature, 60 seats had been reserved for women, who would also be free to contest elections to the open seats. The system of separate electorates for the minorities had been abolished in favour of universal adult suffrage.

92. His Government had devoted serious attention to ending extremism and lawlessness. Strict action was being taken against those madrasas (Islamic schools) that had veered from their basic objective of providing education, and their curriculum was being modernized. The Government had also embarked upon a deweaponization drive, which had produced some significant results.

93. The judiciary in Pakistan remained completely free and independent. The Supreme Court had, on many occasions, upheld the rights of the citizens The media, including the written press in many languages, were also recognized to be completely free.

94. For many years, Pakistan had been the target of a coordinated, well-organized and vicious campaign of terrorism. Bus and railway stations, bazaars, courts and even places of worship had been targeted. A recent grenade attack on a church in Islamabad had resulted in the deaths of five people. His Government condemned all forms of terrorism.

95. It was regrettable that certain States seemed all too willing to indulge in such reprehensible behaviour, often perpetrated against peoples struggling to exercise their fundamental right of self-determination. It was even more ironic that the States perpetrating such atrocities labelled those freedom movements as terrorist. The Commission must not encourage those who had resorted to foreign occupation and the repression of occupied peoples.

96. India was seeking to delegitimize the Kashmiri freedom struggle by depicting it as terrorism and had accused Pakistan of sponsoring so-called "cross-border terrorism". The Kashmiri struggle was indigenous and involved not a border, but a ceasefire line dividing two parts of Jammu and Kashmir. There was no terrorism. The Kashmiri struggle was a legitimate one for the right of self-determination, endorsed by several Security Council resolutions. He called upon India to live up to its obligations to implement those resolutions, respect the wishes of the Kashmiri people, respect the desire of the international community to de-escalate the current tensions and open a dialogue with his country to achieve a just and peaceful solution to the Kashmir dispute.

97. Mr. PEREZ-VILLANUEVA y TOVAR (Spain), speaking on behalf of the European Union and of the associated countries of Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia, said that the Union welcomed the fact that a growing number of States had become parties to the International Covenant on Civil and Political Rights. The Union urged all those States that had not yet done so to become parties to the Covenant and thus achieve the universal ratification of the instrument.

98. Despite the guarantees for the protection of human rights under international law, the reports by the special rapporteurs made it clear that, in all parts of the world, people were becoming victim to summary executions, torture, arbitrary arrests and disappearances. Many Governments systematically violated the principle of the independence of judges and lawyers and the rights to freedom of expression, religion and belief.

99. The Union welcomed Human Rights Committee's General Comment No. 29 on States of Emergency (CCPR/C/21/Rev.1/Add.11) and urged States parties to respect the principles it enshrined so as to ensure that human rights violations did not occur when obligations under international instruments were suspended as a result of the proclamation of a state of emergency. It was particularly important that Governments should respect the principle of proportionality, which required that measures adopted during a state of emergency should be limited to the extent

strictly required by the exigencies of the situation. There were certain rights from which no derogation could be made, such as the right to life and the right not to be subjected to torture or other cruel inhuman and degrading treatment. Derogations must not be inconsistent with a State's other obligations under international law and must not be discriminatory.

100. Governments were responsible for amending domestic legislation to comply with international standards and to ensure their effective implementation. They should cooperate with the international treaty monitoring bodies and the special mechanisms of the Commission. The individual communications system was the most accomplished monitoring mechanism among those established in the framework of the International Covenant on Civil and Political Rights and granted the greatest level of protection to individuals. The Union called on all States parties to the Covenant to consider ratifying its Optional Protocol.

101. The Union commended the Special Rapporteur on extrajudicial, summary or arbitrary executions on her work but was deeply concerned by the fact that many of the practices described in her report (E/CN.4/2002/74) continued to take place in different parts of the world.

102. It was essential that State agents, particularly security forces, received training in human rights, especially concerning the restrictions on the use of force and firearms in the fulfilment of their duties.

103. All the members of the Union were strongly in favour of the abolition of the death penalty. Where it still existed, its use should be progressively restricted and minimum standards should apply, so that the death penalty was not imposed on persons below 18 years of age at the moment of the commission of the crime, on pregnant women or new mothers and on persons with mental disorders. Moratoriums on executions should be introduced.

104. Every act of enforced or involuntary disappearance was an outrage against human dignity. The families of missing persons were also victims. States must take appropriate steps to establish effective procedures for investigating thoroughly all cases of disappearance. The Union thus welcomed the creation of an inter-sessional working group to prepare a draft legally binding instrument for the protection of all persons from enforced disappearances.

105. The Union reaffirmed the obligation of all States to prevent acts of torture and other cruel or degrading treatment. Steps should be taken to implement safeguards and procedures against such practices, including a preventive system of regular visits to places of detention. He commended the chairperson of the working group on the optional protocol to the Convention against Torture and Other Cruel or Degrading Treatment or Punishment for her efforts in that field, and urged all the members of the Commission to support the draft resolution submitted by Costa Rica on the subject. It was important to protect and promote the rights of victims, including the right to effective remedies and compensation. All States should thus contribute to the United Nations Voluntary Fund for Victims of Torture.

106. It was regrettable that, in many countries, the practice of administrative detention placed detainees out of judicial control. States must offer effective guarantees against arbitrary detention.

107. The Union supported the work of the Special Rapporteur on the independence of judges and lawyers and reiterated the importance of Governments respecting the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors. There was a close link between the absence of independence and impartiality of the judiciary and the seriousness and frequency of human rights violations. It was particularly important that the statutes of special and military courts complied with international standards regarding their impartiality, independence and competence of judicial power designed to ensure that trials were conducted fairly.

108. The Union supported the work of the Special Rapporteur on freedom of expression and shared his concern at the continuing silencing of women. It called upon Governments to ensure equal representation and participation of women and men at all levels of the decision-making process. It welcomed the report of the Special Rapporteur on freedom of religion or belief (E/CN.4/2002/73) and hoped that all the recommendations contained therein would be effectively implemented by all States.

The meeting rose at 1 p.m.

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COMMISSION ON HUMAN RIGHTS

Fifty-eighth session

SUMMARY RECORD OF THE 36th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 April 2002, at 3 p.m.

Chairperson: Mr. JAKUBOWSKI (Poland)

later: Mr. SALLOUM (Syrian Arab Republic)
(Vice-Chairperson)

later: Mr. JAKUBOWSKI (Poland)
(Chairperson)

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(a) MIGRANT WORKERS

(b) MINORITIES

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The meeting was called to order at 3.05 p.m.

SPECIFIC GROUPS AND INDIVIDUALS:

(a) MIGRANT WORKERS

(b) MINORITIES

(c) MASS EXODUSES AND DISPLACED PERSONS

(d) OTHER VULNERABLE GROUPS AND INDIVIDUALS (agenda item 14) (E/CN.4/2002/93 and Add.1, 94 and Add.1, 95 and Add.1-3)

1. Ms. RODRÍGUEZ PIZARRO (Special Rapporteur on the human rights of migrants) introduced her annual report on the human rights of migrants (E/CN.4/2002/94). The report stressed the progress made in that area at the international level during the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held at Durban in August and September 2001. Forty-five paragraphs of the Declaration and Programme of Action of the Conference were specifically devoted to the situation of migrants and the protection of their rights and, at the time of submission of her report, 17 countries had ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Nineteen States were currently parties to the Convention and only one more ratification was required for its entry into force.

2. She had often stressed that the migration of men and women in search of better living conditions for themselves and their families had benefits for the people of both the countries of origin and host societies. However, those benefits could not be measured solely in terms of economic progress and growth in productivity; the positive effects of multiculturalism and diversity must also be taken into account.

3. She had also emphasized the importance of regularized migration, particularly where there was a real demand for migration, and of combating human smuggling. She called on States to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organized Crime.

4. With the help of the international community, countries of origin must generate conditions that allowed their nationals to remain in the country. On the other hand, in the face of migratory pressure, they should make efforts to prevent their nationals from leaving home without protection and fron. placing their lives in the hands of transnational trafficking networks. The situation of women and unaccompanied minors remained a source of great concern in that regard. Transit and destination countries must therefore fulfil their international obligations to protect the rights of migrants, including access to education and health care and family reunification. Common, realistic and equitable solutions should be sought at the bilateral and regional levels in order to resolve the problem of irregular migration and human smuggling and, where appropriate, to allow migrants to return to their countries of origin in dignity. Solutions should be sought jointly by concerned institutions, non-governmental organizations (NGOs) and international organizations.

5. Introducing her report on her official mission to Ecuador in November 2001 (E/CN.4/2002/94/Add.1), she said that the Government of Ecuador had undertaken important commitments, in cooperation with civil society and migrant organizations, regarding a human rights approach to its migration policies. Those efforts constituted an example of good practice of a State involving NGOs in its decision-making process and in policy-making in the field of migration. She hoped that the Government of Ecuador would fulfil its commitments on the ground with the support of the international community. Lastly, she thanked the Governments of the countries who had cooperated with her by responding to her communications, the organizations that had supported her and the migrants who had shared their experiences with her.

6. Mr. VALENCIA (Ecuador) expressed appreciation for the visit to Ecuador by the Special Rapporteur, Ms. Rodríguez Pizarro. His Government attached particular importance to the situation of migrants and believed that their human rights should be protected, regardless of their migration status.

7. As the Special Rapporteur had noted, the Government of Ecuador had adopted that policy at all levels. At the international level, Ecuador had recently ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and, at the bilateral level, it had signed an agreement with Spain to regulate migratory flows to that country. Similar relations had been established with other States. At the internal level, with the involvement of civil society, Ecuador had adopted a national plan designed to take a comprehensive approach to issues affecting migrants and their families. The Special Rapporteur had welcomed those initiatives and had called on the international community to provide Ecuador with assistance in that area. He thanked the Special Rapporteur again for her visit, wished her every success in her mandate and assured her of his Government's ongoing cooperation.

8. Mr. DENG (Representative of the Secretary-General on internally displaced persons) said that his initial assignment had been to study the causes and consequences of internal displacement, the international legal and institutional frameworks that provided a basis for protection and assistance and the ways in which the international community might respond more effectively to the needs of displaced persons. At the normative level, the Guiding Principles on Internal Displacement, which had been presented to the Commission in 1998, had, generally speaking, been well received. Though not legally binding, the Principles were used by Governments in the development of their law and policy and by regional organizations, NGOs and displaced communities themselves. Dialogue with the Governments concerned was being pursued in order to find common ground that would broaden support for the Principles.

9. At the institutional level, the Emergency Relief Coordinator, who headed the Office for the Coordination of Humanitarian Affairs (OCHA), was responsible for ensuring assistance to displaced persons. An Inter-Agency Network responsible for mobilizing operational agencies on the ground and a specialized OCHA unit responsible for assessing international efforts to meet the assistance and protection needs of internally displaced persons and for making recommendations in that area on a country-by-country basis had also been established.

10. Fruitful cooperation had been developed with various intergovernmental organizations, including the Organization of African Unity, now the African Union; the Organization of American States (OAS); the Organization for Security and Cooperation in Europe (OSCE); and the Council of Europe, and promising contacts had been made with other regional and subregional organizations.

11. He considered country missions to be a particularly important aspect of his mandate since they provided a means of assessing the extent to which the protection, assistance and development needs of the internally displaced were being met and of engaging in solution-oriented dialogue with the Governments and organizations concerned. The findings and recommendations resulting from his 21 missions to different countries were set out in his reports to the Commission, the General Assembly and the Inter-Agency Standing Committee (IASC) and in press releases. He stressed the need to create better institutional structures to protect displaced persons and to address their need for housing; some of them spent years in makeshift shelters in their own country.

12. Describing his mission to Indonesia, he said that internal displacement was a new phenomenon there and that the Government was striving to respond to it by facilitating displaced persons' return to or integration into their host communities. He had urged the Government to create appropriate conditions for those options and had called on the international community to assist the Indonesian Government in that area.

13. Speaking of his mission to the Sudan, one of the countries most affected by the crisis of internal displacement, he said that although the situation of the displaced had improved somewhat since 1992, the crisis remained serious. After discussion with the Sudanese authorities, it had been decided to hold a workshop on the issue, which would be organized at the subregional level for countries members of the Inter-Governmental Authority on Development, which the Sudan currently chaired.

14. Other missions to Turkey, Mexico and the Philippines were planned for the current year; a mission to the Russian Federation might also be arranged. He had requested a mission to the occupied Palestinian territories but was still awaiting a positive response from the Israeli authorities.

15. Lastly, he said that studies on internal displacement were being prepared with the assistance of the Project on Internal Displacement at the Brookings Institution. The two volumes already published contained a global overview of internal displacement, set out the legal and institutional frameworks for addressing it, examined the role of NGOs and regional organizations and provided recommendations and case studies on various regions of the world.

16. While much had been accomplished in the establishment of normative and institutional frameworks, it must be borne in mind that 25 million people in over 40 countries around the world were still internally displaced, in desperate need of protection and assistance and often in inaccessible regions; thus, it was important not to become complacent but to make the most effective use of the new tools currently in place. The Guiding Principles, which provided the only normative framework for internal displacement, should be supported and applied, as should institutional arrangements, whose effectiveness could not yet be judged. While country missions

had proved promising, they had involved countries whose Governments were prepared to engage in constructive dialogue with him and with other international officials. However, in some countries where the needs of the displaced were particularly acute, Governments were not receptive to international involvement.

17. Central to the debate on internal displacement had been the sensitive issue of national sovereignty. His approach had been to recognize the problem as inherently internal and therefore a matter of State sovereignty but, at the same time, to state that sovereignty entailed responsibility to ensure the protection of citizens, with help from the international community as needed. Thus far, the problem of internal displacement had been perceived as a humanitarian crisis and, to a limited extent, as a human rights issue. However, it was becoming increasingly apparent that in most cases it was a crisis of national identity linked to political, social, cultural and religious cleavages within a country which determined who received assistance and who was neglected or even persecuted. The solution to those problems would require a restructuring of powers and resources in order to foster peace and justice. Ultimately, the problem of displaced persons must be addressed by the nationals of the countries concerned, but the international community could and should play a constructive role in accordance with the universalizing norms of human dignity.

18. Mr. SIDDIG (Sudan) said that he welcomed the report of the Representative of the Secretary-General on Internally Displaced Persons on his mission to the Sudan (E/CN.4/2002/95/Add.1). However, the statement that elements within the Government had opposed the mission was incorrect. The Sudanese Government had welcomed the mission and the Representative of the Secretary-General had been able to meet with the President and many key figures. The Government had accepted the proposal to hold a national seminar on displaced persons and would take into account the Guiding Principles on Internal Displacement in developing its national strategy in that area. He assured the Representative of the Secretary-General of his support and expressed appreciation for the report's acknowledgement that progress had been made and measures taken to improve the situation of displaced persons in the Sudan.

19. Mr. van BOVEN (Member of the Board of Trustees of the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery) said that at its seventh annual session in January 2002, the Board of Trustees of the Fund had reviewed about 40 applications for project grants from NGOs for the provision of humanitarian, legal or financial aid to victims of contemporary forms of slavery and 40 new applications for travel grants to allow representatives of NGOs to attend the twenty-seventh session of the Working Group on Contemporary Forms of Slavery in May 2002. At the recommendation of the Board, the Secretary-General had approved 7 travel grants and 21 project grants for a total of about US$ 136,000. The list of approved beneficiaries and recommendations would be included in the report of the Secretary-General to the Working Group on Contemporary Forms of Slavery; information on the Fund's expenditures for 2002 would be provided in the report of the Secretary-General to the General Assembly at its fifty-seventh session. In the light of the number of requests received in 2002 and the resources available, the Fund would need US$ 300,000 to finance the grants that had been approved. He recalled the appeals for contributions made by the Sub-Commission on the Promotion and Protection of Human Rights and urged all donors to contribute to the Fund before 1 December 2002.

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:

(a) TORTURE AND DETENTION

(b) DISAPPEARANCES AND SUMMARY EXECUTIONS

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(f) STATES OF EMERGENCY

(g) CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

(agenda item 11) (continued) (E/CN.4/2002/5, 7, 8, 12, 63-65, 66 and Add.1, 67, 68, 69 and Add.1, 70, 71, 72 and Add.1-3, 73 and Add.1, 74 and Corr.1 and Add.1 and Corr.1 and Add.2, 75 and Add.1 and 2, 76 and Add.1, 77 and Add.1 and 2, 78, 79, 121, 122, 124, 125, 130, 134, 137, 143, 144, 152, 154, 155, 157, 162, 163 and 170; E/CN.4/2002/NGO/1, 9-11, 16, 18, 19, 25, 30, 38, 42, 49, 53, 70-79, 100, 104, 106, 120, 126, 131-141, 144, 148, 162, 164, 177, 182-187 and 193; A/56/181 and 253; A/RES/56/143; E/CN.4/Sub.2/2001/6 and Corr.1 and 31)

20. Mr. SARRAH (Libyan Arab Jamahiriya) informed the Commission of the legislative provisions governing the judiciary in Libya. The 1969 Constitution guaranteed the independence of judges, whose function was to protect rights and freedoms; granted every individual the right of recourse to the courts; and gave accused persons the means to defend themselves. Second, the Great Green Document on Human Rights guaranteed a fair trial and the Promotion of Freedom Act allowed the courts to provide the services of a lawyer free of charge. The Organization of the Judiciary Act guaranteed the independence of judges, who could not be dismissed except on grounds of health or lack of credibility. The General Assembly of Court Judges was in charge of the internal organization of the courts. The Council of the Judiciary was responsible for the appointment, promotion, transfer and retirement of members of the judiciary. The Supreme Court, which was an appeals court, monitored the legitimacy of legislation adopted and decisions taken with regard to judges, and lawyers could be prosecuted for malpractice. Members of the judiciary and lawyers had the right to form labour unions and professional associations.

21. Mr. VEGA (CHILE), speaking on behalf of his country and the Group of Latin American and Caribbean States (GRULAC), noted that the term "disappeared persons" had been used for the first time in reference to Latin America. He paid tribute to the role that France had played and continued to play in protecting the rights of the victims of such disappearances. Unfortunately, as the independent expert charged with examining the existing criminal and human rights framework for the protection of persons from enforced or involuntary disappearances had noted in his report (E/CN.4/2002/71), enforced disappearance had become a universal phenomenon which the international community must combat with greater determination.

22. In his report, the independent expert rightly acknowledged that enforced disappearance was one of the most serious human rights violations, that there were gaps in the current international legal framework and that there was a need to adopt a legally binding normative instrument for the protection of all persons from enforced disappearance. GRULAC awaited with interest for the Open-ended Working Group whose establishment the Economic and Social Council had approved in its decision 2001/221 to begin its work. It would be preferable to deal first with the substantive issues before deciding on the form that a future international instrument should take.

23. Mr. ARENALES FORNO (Guatemala) said that human rights were universal, indivisible and interdependent and that respect for civil and political rights and economic, social and cultural rights should go hand in hand. Human rights and fundamental freedoms could be fully guaranteed only in pluralist, participatory democracies. His delegation therefore regretted that the representatives of authoritarian or pseudo-democratic countries criticized Western democracies which, despite their flaws, constituted the form of government which gave their citizens the greatest opportunity to exercise and protect their rights and freedoms. The countries in question would do better to emulate those democracies, whose institutions they should adapt. The primary danger to emerging democracies in Africa, Asia and Latin America was that of merely holding transparent, fair elections without genuine representativity or democratic participation, thereby giving their people the impression that democracy did not work.

24. He welcomed the establishment of a Working Group responsible for developing a legally binding normative instrument for the protection of all persons from enforced disappearance; he also urged the Commission to adopt at its current session the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which would establish a preventive system in that area, at the national and international levels.

25. Mr. Salloum (Syrian Arab Republic), Vice-Chairperson, took the Chair.

26. Mr. Al-FAIHANI (Bahrain) condemned in the strongest terms all terrorist acts, regardless of their motivation. Terrorism was contrary to all religious teachings and basic standards of human rights and undermined global peace and security. It was therefore vital for the international community to unite in order to overcome that danger, which did not respect national borders. There was scarcely any country that had not been subject to terrorist acts, which were increasingly frequent. There was a need to strengthen international cooperation, both among States and among international organizations, regional organizations and the United Nations system. Such coordinated international cooperation to combat the threat of terrorism should be consistent with the principles of the Charter of the United Nations, the human rights instruments, international law and the relevant international conventions. The actions of a single State or a limited number of States could not win the war against terrorism; all States must refrain from providing any form of assistance or safe haven to the perpetrators and instigators of acts of terrorism.

27. The international community must define terrorism properly and must not link it with legitimate resistance to foreign occupation. In that regard, he stressed the Syrian, Lebanese and Palestinian peoples' right under international law to combat foreign occupation and called on Israel, as the occupying Power, to cease its unethical and illegitimate war against the Palestinian

people. He rejected the conflation of Islam and terrorism by both Muslims and non-Muslims; intolerance, extremism and violence had no place in Islam. His delegation therefore called on the Commission to speak out against those who promoted hatred against Islam and Muslims.

28. Mindful of the importance of combating the causes of terrorism and extremism, the Kingdom of Bahrain had embarked on a political and economic programme designed to promote human rights and fundamental freedoms and to combat extremism. It was preparing to become a democratic constitutional monarchy in accordance with the National Action Charter adopted by referendum on 14 February 2001. His delegation assured the Commission that it would spare no effort to strengthen international cooperation against terrorism while respecting human rights and fundamental freedoms.

29. Mr. SALINAS (Chile) said that since the establishment of the national Truth and Reconciliation Commission, Chilean society had made a great effort to develop measures and programmes to provide the victims of human rights violations and their families with adequate compensation. The Chilean Government's goal had been not only to compensate the families and victims, but also to restore the dignity of those whose fundamental rights had been assailed by giving them public recognition that could help them to overcome the psychological and physical effects of the violence they had sustained. With the help of friendly countries, NGOs, jurists and experts, Chile had endeavoured to develop a set of principles and guidelines for compensating the victims of human rights violations in three areas: restitution, compensation and reintegration. It would therefore sponsor a draft resolution designed to complete the consultation process on the basic principles and guidelines developed by Mr. van Boven and Mr. Bassiouni. That set of principles would doubtless make a significant contribution to international human rights law.

30. Mr. SHEN Yongxiang (China) said that the realization of civil and political rights, which were an integral part of human rights, was an evolving process. Only by combining the principle of the universality of human rights with specific national conditions would it be possible for each country to promote those rights effectively. No country should impose its own model on others.

31. China had made tremendous efforts to promote and protect civil and political rights, first by adopting many laws to build democracy and the legal system and, second, by taking various measures to strengthen judicial supervision, upgrade law enforcement personnel and ensure fairness in the administration of justice. In 2001, 4,342 judicial officials had been convicted of bribery and misconduct. Before assuming their duties, such officials must now pass a strict nationwide judicial examination. Third, freedom of expression was guaranteed by the Chinese Constitution. The Government encouraged the people to express their opinions and welcomed media monitoring. It had set up offices to receive and handle complaints and criticism. Fourth, respect for and protection of freedom of religion were enshrined in the Chinese Constitution. The State protected the religious activities of over 100 million believers; however, some Western figures had accused the Chinese Government of "religious persecution" because it had combated, according to law, illegal and criminal activities that seriously harmed public interests. Fifth, Chinese law prohibited and punished acts of torture, which were defined as criminal acts. Cases of torture, though isolated, were never tolerated by the Chinese Government and were always treated seriously. As a State party to the United Nations Convention against Torture, China had

consistently fulfilled its obligations and had submitted its reports in a timely manner. At the invitation of his Government, the Working Group on Arbitrary Detention had visited many Chinese prisons and had praised the fair treatment of inmates. In December 2001, his Government had invited the Working Group on Arbitrary Detention and the Special Rapporteur on torture to visit China. Allegations by certain Western Powers that torture was routinely practised in Chinese prisons were sheer fabrication; in all countries, there were both successes and failures in the promotion and protection of human rights. The Chinese Government was open to cooperation with all countries on the basis of equality and mutual respect in order to advance the cause of human rights throughout the world.

32. Mr. MVONDO AYOLO (Cameroon) described the measures that his Government had taken after the visit of the Special Rapporteur on torture. In Cameroon, an internal police body had been established in order to punish police officers and army officers who committed human rights violations, including acts of torture. Discipline had been strengthened in the prisons and, in cooperation with the National Committee for Human Rights and Freedoms, an inspection of the detention centres had been carried out. The European Union had already offered to fund the work of a group of volunteer lawyers and judges in order to reduce overcrowding in the prisons as a result of the large number of people held in pre-trial detention.

33. A comprehensive humanization programme for the jails was being developed. Jails had been brought into line with international standards in, inter alia, Douala, and there were plans to build new ones in Yaoundé and other major cities. The programme would also improve conditions of detention, particularly in the areas of food and health care. The prison administration was required to ensure that detainees were well treated; to that end, events known as "detainees' weeks" were held in the prisons. The programme for the improvement of conditions of detention was part of cooperation with France established in 1999; it also required support from the international community. Lastly, the subregional centre for human rights in Yaoundé, in focusing on human rights education and training, was certain to have a positive influence on law enforcement personnel and prison officers.

34. His Government was convinced that major reforms were needed in the field of education in order to ensure respect for national and international standards in that area and, in particular, to eliminate the practice of torture and to ensure that public officials who committed torture did not go unpunished.

35. The question of extrajudicial and summary executions had been mentioned by the Special Rapporteur; his delegation emphasized that the Government had never endorsed such practices. All those who committed such offences were brought to trial. However, the country was currently faced with a tremendous security problem in the cities (Douala and Yaoundé) owing, inter alia, to organized crime linked to illegal weapons trafficking. The problem was a source of concern to all the countries of the Central African subregion, where borders were easily penetrated and no definitive solution had as yet been found to the problem of resettling refugees, who in many cases closely resembled militias. Special units had been created to address that situation; their purpose was certainly not to torture or execute people, but when faced with the agents of organized crime they had to defend themselves. The result was loss of human life on the part of both the security forces and the criminals.

36. Mr. TIBARUHA (Uganda), noting that Uganda was a party to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, cited the provisions of the Ugandan Constitution prohibiting all forms of torture and guaranteeing the independence of the Ugandan Human Rights Commission in the performance of its monitoring duties. The Commission was empowered to hear complaints of torture and to order any State body under whose aegis torture was committed to pay compensation. It was also mandated to visit prisons in order to ascertain whether the human rights of inmates were being violated. In that connection, Uganda supported the eventual adoption of an optional protocol to the Convention against Torture.

37. The Constitution provided that anyone arrested or detained must be informed immediately of the reasons for his arrest and of his right to see his lawyer and next of kin and to be brought before a judge not less than 48 hours from the time of arrest or detention. Under all circumstances, including a state of emergency, the right to a writ of habeas corpus and to a fair hearing was inviolable.

38. The provisions of the Constitution relating to detention could be waived only during a state of emergency and if ordered by Parliament. In any event, cases of detention were subject to review by the Ugandan Human Rights Commission not more than 21 days after the commencement of detention and, thereafter, at 30-day intervals. The Commission could order the detainee's release or uphold the grounds for the detention. Furthermore, the Minister responsible must make monthly reports to Parliament on the number of persons detained under the state of emergency and on the action taken in compliance with the findings of the Ugandan Human Rights Commission, and the names of the persons detained and the legal grounds for the detention must be published in the official gazette. Thus, the Ugandan Constitution guaranteed protection of the civil and political rights of all persons in Uganda without discrimination of any kind.

39. Mr. SOUALEM (Algeria) said that the wave of solidarity and international mobilization in the wake of the events of 11 September 2001 were proof of the emergence of a collective, consensual approach to the danger of transnational terrorism, which denied the values on which the Commission's annual sessions focused. If States' commitment to that path was further strengthened, the development of such a trend could promote the triumph of the ideals of liberty, justice and progress throughout the world.

40. Democracy, to which all countries aspired, was a long-term goal influenced by various factors, but it must never be experienced by peoples as an asset that only the most powerful could possess. In other words, democracy must not be perceived as a new form of violence or threat to the "have nots" by the "haves". The persistence of many forms of injustice and of poverty throughout the world should encourage the development of international cooperation on all human rights issues. It was clear that the marginalization of developing countries' economies remained the primary source of instability and insecurity and the primary cause of political crises, trafficking, corruption and organized crime and of the environmental damage which threatened the survival of entire peoples. The debt burden remained a major obstacle to development and addressing that problem should be a major focus of international solidarity.

Lastly, as the globalization process began, discussion of human rights must not take precedence over the fundamental question of sustainable development; greater focus on that issue could only help to end exclusion and marginalization.

41. Mr. SOLARI (Argentina), speaking on behalf of the Southern Common Market and the associated States, Bolivia and Chile, said that democracy was the most satisfactory, and perhaps the only, system under which individuals could fully exercise their rights.

42. On 24 July 1998, the Southern Common Market (MERCOSUR) and its associated States had adopted the Ushuaia Protocol, part of the Treaty of Asunción, which institutionalized the protection of the democratic system in the region. The Protocol established a system of consultation in the event of a breakdown in democracy in any of the six countries members and called for the possibility of suspending the right of the State party in question to participate in the various MERCOSUR bodies and even of revoking its membership in the organization.

43. In accordance with the provisions of the American Charter of Human Rights, the States members of MERCOSUR, Bolivia and Chile considered the following to be essential components of representative democracy: respect for human rights and fundamental freedoms; access to and exercise of power in compliance with the law; the holding of periodic, free and fair elections on the basis of universal suffrage; a multiplicity of political parties and organizations; and separation and independence of powers.

44. Those countries were convinced that a democratic system needed to be monitored constantly, which presupposed a free press, an independent judiciary, anti-corruption measures and a civil society able to express itself and act freely.

45. In fact, some of those democratic States had themselves experienced political, economic and social problems. However, thanks to the maturity shown by their people and the solidarity shown by the other members of MERCOSUR, those crises had been resolved in a democratic fashion.

46. Mr. SOLARI (Argentina), speaking as the representative of his country, said that his delegation agreed fully with the statement made on agenda item 11 by the Chilean ambassador on behalf of GRULAC.

47. He welcomed the entry into force of the Rome Statute of the International Criminal Court, which marked a significant advance in the field of human rights. There was also a need for a binding international instrument to protect people against enforced or involuntary disappearances. He was therefore in favour of setting up an open-ended working group to draft such an international instrument. In that connection, he greatly appreciated the important report submitted by the independent expert Mr. Manfred Nowak (E/CN.4/2002/71) and fully agreed with its conclusions.

48. Mr. PEREZ SANCHEZ-CERRO (Peru) reaffirmed his Government's conviction that human rights were not only universal, indivisible and interdependent but also transcended borders and could not be considered as a purely internal matter for States. His Government had demonstrated the sincerity of that conviction by openly inviting rapporteurs and other

mandate-holders of the Commission on Human Rights to visit Peru. It had also normalized relations with the inter-American human rights system and had accepted the decisions of the Inter-American Commission on Human Rights in over 100 cases. Lastly, Peru had recently ratified the Inter-American Convention on Forced Disappearance of Persons and, like other GRULAC members, strongly supported the establishment of an intersessional working group to prepare a universally applicable draft convention on that subject.

49. Peruvian society had not been spared by terrorism, a phenomenon that the Peruvian State had combated without always taking into account its international human rights commitments. One of the main lessons that Peru had drawn from its confrontation with terrorism was that respect for human rights was no obstacle to putting an end to that scourge; on the contrary, such respect could only strengthen the position of the State and society in the face of acts that could never be justified. To rectify, insofar as that was possible, the mistakes made in the past by the State in combating terrorism, his Government had set up a special fund to handle illicit gains, which would be used to finance the work of the Truth and Reconciliation Commission and to pay compensation to the victims of human rights violations. In taking those measures, his Government was merely returning to one of the basic principles of its foreign policy, namely, the faithful implementation of the international treaties to which it was a party. In the same spirit, it supported the important work carried out within the Commission on Human Rights, particularly that done by the open-ended working group on a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In that regard, he invited States to show flexibility so that the protocol could be adopted without delay.

50. Given the numerous tasks still to be accomplished if Peru was to offer each of its citizens a life of dignity, it was more than ever necessary to establish an alliance between the Peruvian Government, civil society and the international organizations. In that regard, he welcomed the contribution by NGOs and international human rights mechanisms. The Peruvian people were well aware of NGOs' tireless efforts to give effect to the altruistic ideal enshrined in the Universal Declaration of Human Rights.

51. Mr. HARAGUCHI (Japan) drew attention to the close links between the consolidation of democracy, in which individuals participated in government and development, and the protection of human rights. Freedom of expression was very important in that respect, especially in modern societies, where new information technologies should enable everyone to receive information from all over the world and thus be better placed to play a role. However, the circulation of information could also be dangerous, as it might transmit messages, on racial hatred or child pornography for example, which could be very harmful for society. Those problems must therefore be tackled with care not to impose unlawful and unnecessary restrictions on freedom of expression.

52. His Government was deeply concerned about the serious human rights violation that enforced or involuntary disappearances represented. Notwithstanding the regrettable decision of the Working Group on Enforced or Involuntary Disappearances with regard to the cases of disappearance of Japanese nationals, he drew the attention of all States to the cases in question and requested them, in accordance with Commission on Human Rights resolution 2001/46, of 23 April 2001, to cooperate with United Nations bodies in the search for a solution.

53. Mr. KASRI (Indonesia) said that in the past year his Government had concentrated its efforts on promoting dialogue and reconciliation, with the active participation of the people of Indonesia. As a result of its efforts, peace plans had been drawn up for the Moluccas and Central Sulawesi. The Government had also taken steps to put an end to impunity, which was largely a legacy of previous Governments. An ad hoc court had been set up to try flagrant human rights violations committed in East Timor. Similar courts had also been set up in the main towns in the country and the President of Indonesia, Ms. Megawati Soekarnoputri, had just signed two laws to protect witnesses in the trials and to compensate and rehabilitate the victims of abuse. There was still a good deal of work to be done if the Indonesian judicial system was to rival those of established democracies. However, the system was under review in order to ensure, in particular, the independence of judges. In that regard, the forthcoming visit by Mr. Cumaraswamy, the Special Rapporteur on the independence of judges and lawyers, would undoubtedly be beneficial.

54. In Indonesia, torture was defined as a crime against humanity under domestic law. Anyone suspected of using force to obtain a confession was liable to prosecution. Moreover, the repeal of the controversial law on subversion, the review of the law on criminal procedure and the drafting of the new law on the Penal Code, which would contain provisions on torture, would also help improve matters in that area. In addition, human rights observers and representatives of the International Committee of the Red Cross regularly visited Indonesian prisons.

55. With regard to freedom of expression, the Government was pursuing the reforms begun in 1999 to guarantee freedom of the media and to facilitate access to information, particularly to online media. In addition, an invitation had been extended at the end of the year to Mr. Abid Hussein, Special Rapporteur on the right to freedom of opinion and expression, to visit Indonesia.

56. In her report (E/CN.4/2002/74), the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, denounced the excessive use of force by the Indonesian police during demonstrations. Although those demonstrations were actually far from "peaceful", the current policy of the police was to negotiate with demonstrators before resorting to force. Furthermore, members of the security forces throughout Indonesia had to follow an intensive training course familiarizing them with human rights principles. Lastly, the recently-adopted bill on the national police placed the police under the jurisdiction of civil courts, rather than military courts.

57. The religious conflicts that had pitted Muslim and Christian communities against each other in the Moluccas and Central Sulawesi could be considered a thing of the past. Following the signing of two peace agreements in Malino, life had returned to normal in the two regions, so that the two-year state of emergency should soon be lifted.

58. Although Indonesia was still a country in transition and would need time to stabilize the political situation after the crises it had been through, the political will was there and developments in the situation justified a cautious optimism.

59. Mr. KPOTSRA (Togo) said that a free and independent press was a key part of democracy. There were 15 or so newspapers in Togo, two thirds of which represented the different opposition movements. At the same time, private, commercial or religious Togolese or foreign radio stations and private television channels were growing in number as a consequence of article 26 of the Constitution of the fourth Togolese Republic, which enshrined freedom of the press and stipulated in particular that the press did not require prior authorization, did not have to provide sureties, was not subject to censorship or other hindrances and could be banned only by a decision of the courts. Freedom of the press was thus exercised within the limits laid down by law. The international media had recently reported that journalists working for the private Togolese press had been arrested. Those arrests, most of which had followed complaints by individuals, had been for broadcasting untrue stories or information, defamation, attacks on honour and dignity or forgery - in any case, for ordinary law offences that were punishable as such.

60. Ms. CEK (Croatia), speaking on the question of terrorism, which had become a priority for the entire United Nations system after the tragic events of 11 September, said that the Commission on Human Rights was the appropriate forum in which to consider ways to combat that phenomenon while respecting human rights and fundamental freedoms.

61. Notwithstanding the United Nations Convention against Torture, instances of that practice were still widespread. It was therefore vital to establish credible preventive mechanisms. The draft optional protocol to the Convention prepared by the Working Group was satisfactory insofar as it provided not only an international mechanism for carrying out visits to places of detention but also national mechanisms to ensure that monitoring was ongoing. She called on the members of the Commission to support the Chairperson's proposal on the optional protocol.

62. Conscientious objection to military service was a legitimate right of every person. Under Croatian legislation, anyone who, for religious or moral reasons, did not wish to serve in the armed forces could opt for alternative military service. Moreover, a bill was being prepared to introduce that right into the Constitution. The drafters of the bill were guided by Commission on Human Rights resolution 1998/77. In that respect, she was pleased that the Office of the United Nations High Commissioner for Human Rights had set itself the objective of preparing a compilation of best practice in that area.

63. Mr. AHMAD FAIRUZ (Malaysia) said that Malaysian society was a multiracial one within which tolerance had long guaranteed peace and harmony. Although Islam was the official State religion, freedom of religion was guaranteed by the Constitution. The Constitution also established a clear separation between the legislative, executive and judicial powers, with a completely independent judiciary. Judges had always been appointed by the King on the advice of the Prime Minister and after consultations with the Conference of Rulers and the Chief Justice; they enjoyed security of tenure and exemption from criminal and civil liability in the exercise of their duties. The claims by the Special Rapporteur on the independence of judges and lawyers in his last two reports that the Malaysian judicial system was not completely independent were therefore incorrect. As proof, the Federal Court had allowed the appeal of Zainur Zakaria, one of the lawyers working for former Deputy Prime Minister Anwar Ibrahim, and had quashed the lawyer's sentence for contempt of court because of a procedural flaw.

64. Mr. GUEYE (Senegal) thanked the Chairperson-Rapporteur of the Working Group on the Draft Optional Protocol to the Convention against Torture for his high-quality report and tireless efforts over many years. His delegation supported the adoption of the draft protocol by co-sponsoring every year the resolution submitted for that purpose and was convinced that such an instrument would facilitate compliance with the duty incumbent upon States parties to the Convention to take steps to prevent the use of that inhuman practice. Since ratifying the Convention in 1986, his Government had endeavoured to put into practice all its commitments under that instrument, including by setting up a working group to review domestic law to bring it into line with the Convention. The new Senegalese Constitution, adopted by referendum in 2001, clearly stipulated that the human person was sacred and inviolable and the Penal Code contained provisions intended to prevent acts of torture or, where necessary, to punish severely those who committed them. Thus, all offences against the person were punishable under criminal law when accompanied by acts of torture, whether the guilty person was a private individual or a public official. Moreover, public officials who detained an individual outside the places provided for that purpose was liable to be deprived of their civil rights and Senegalese law gave the victims of abuse by officers of the judicial police the possibility of taking their case directly to the indictment division of the Court of Appeal. An important step had been taken in 2000 with the introduction of sentencing standards, which provided for the creation of the position of judge responsible for the execution of sentences, the tailoring of individual sentences and the intervention of representatives of civil society in cases of detention, under well-defined conditions. The Government had also established a Human Rights Office, to which all individuals and legal persons had access, and the position of Human Rights Commissioner.

65. In a similar vein, Senegal had ratified the Rome Statute of the International Criminal Court less than eight months after signing it. The ratification of the Statute involved taking legislative, administrative and other measures to ensure the applicability of the basic principle of complementarity between the International Criminal Court and the domestic courts. The full implementation of the provisions of the Statute therefore required States parties to implement domestic legislation that conformed to universally recognized norms and those of jus cogens, which Senegal was determined to do.

66. Mr. Jakubowski (Poland), resumed the Chair.

67. Ms. DINH THI MINH HUYEN (Viet Nam) said that in 1986 her Government had adopted its "Doi Moi" (renewal) policy, under which, among other things, the country's legislation had been updated. In adopting new laws, the Vietnamese National Assembly had basically endeavoured to incorporate into domestic law the international instruments to which Viet Nam was a party. The Government's objectives for the next five years were to strengthen the rule of law, reform the three branches of power and promote democracy. Efforts would be made to enhance the power of the National Assembly as the body overseeing the entire range of State activities, particularly in areas such as the utilization of public finance and action to combat corruption and red tape. The administration would be gradually modernized while the emphasis would be on decentralization and the delegation of powers to local government.

68. Although there was no single model of democracy, a fundamental characteristic of all democracies was the full participation of the population in all aspects of life in the country. Viet Nam had made remarkable progress in that respect since beginning the process of renewal.

Democratic institutions had been strengthened, as had the legal system, which had helped enhance the enjoyment of civil and political rights and economic, social and cultural rights. A government decree issued in 1999 stipulated that everyone should henceforth be involved in the consideration of important issues in State affairs. In March 2002, a meeting had been held to review the implementation of the decree. That democratic development had also helped improve the country's economic situation. Thus, during the past decade, poverty had been reduced by half in Viet Nam, which had enjoyed an average growth rate of 7 per cent over the same period, thereby confirming the close relationship between democracy and greater well-being.

69. Mr. MWILANYA WILONDJA (Democratic Republic of the Congo) said that torture and other cruel, inhuman or degrading treatment or punishment should be prohibited outright not only in countries where there was a struggle for power - where the authorities should not use such practices against opposition political or social forces - but also in countries where racist sentiment often led to degrading treatment of immigrants, in particular when they were being escorted to the border. The Democratic Republic of the Congo had acceded to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and several related regional conventions and had given a firm undertaking at a national conference in 2001 to combat torture at all levels of the law-enforcement agencies. To that end, the Government had set up a human rights department in the national police force and the department issued regular information sheets for staff. It had also set up an inter-agency human rights committee consisting of representatives of the Ministry of Human Rights, the Ministry of Justice and the ministries responsible for the special police and security services, whose task was to monitor detention and ensure respect for the rules of procedure and human dignity at all levels of pre-trial investigations.

70. Nevertheless, as pointed out by the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, the situation in the territories under the control of the occupying forces in the east of the country was dramatic. In Goma, there was even a punishment cell with a well-known reputation for torture. Amnesty International had reported that the rape of young girls and women of all ages was in widespread use as a weapon in the war being waged by armed opposition groups and foreign government troops and that the rapes themselves were often accompanied by acts of torture. Those facts had been confirmed by the Special Rapporteur, according to whom such practices and the ensuing spread of sexually transmitted diseases were used as a weapon of war. It was therefore a question of war crimes, which must be condemned by the Commission. According to the jurisprudence of the International Criminal Tribunals for the former Yugoslavia and Rwanda, the systematic rape of women in a given population could constitute genocide. He appealed once more to the Commission to support the proposal to set up an international tribunal for the Democratic Republic of the Congo.

71. Mr. SABHARWAL (India) said that terrorism was one of the most serious threats to human rights. Article 30 of the Universal Declaration of Human Rights prohibited not only States but also any group or person from engaging in any activity aimed at the destruction of the rights and freedoms set forth in the Declaration. Terrorist acts constituted a violation of all fundamental rights, beginning with the very first: the right to life. The Declaration on Measures to Eliminate International Terrorism stated that terrorist acts could not be justified under any circumstances. Democracies were particularly vulnerable to terrorists, who took advantage of the freedom, including the freedom of speech, that they guaranteed. The terrorist attacks on the

legislative assembly of the State of Jammu and Kashmir and against the Indian Parliament were a classic example of the grave threat posed by terrorism to democracy. It was no coincidence that the perpetrators of those attacks came from Pakistan, where successive military dictatorships had always nourished territorial ambitions over Jammu and Kashmir and justified the terrorist attacks on India. Although Pakistan had recently dissociated itself from the Taliban regime under international pressure, it continued to portray terrorists as freedom fighters and it was no surprise that many of them had taken refuge in that country.

72. There was an urgent need to recognize that human rights violations were not the exclusive province of States and that terrorism did indeed involve human rights violations. It was to be hoped that the shock of the events of 11 September would persuade a number of Governments to review their position on the use of violence against innocent civilians, for which there could never be any justification, either political or ideological. That view had been upheld in the Indo-European Union Declaration against International Terrorism and in the New Delhi Declaration. The Commission on Human Rights should also send out a strong signal that the international community would no longer tolerate the activities of terrorists and the States that protected them. An early conclusion to the negotiations on a comprehensive convention on international terrorism would also be welcome.

73. After the attacks on it in 2001, India was absolutely determined to combat cross-border terrorism and was grateful for the international support it was receiving in that respect. Certainly, India's endeavours were not solely in its own national interest, but also fitted in with a worldwide campaign. Lastly, it was important to remember that terrorists had no religion, believing only in violence, so that any attempt to link a terrorist act and a particular religion should be condemned.

74. Ms. ACOSTA (Mexico) said that her country had set itself the objective of eliminating deeply-rooted practices that had held back its development on all fronts. In the belief that democracy and human rights involved a new exercise of sovereignty, including a reorientation of its foreign policy, the current Mexican Government had adopted a human rights programme covering the following points: active participation in international forums; harmonization of domestic law with international standards and practices; cooperation with the Office of the United Nations High Commissioner for Human Rights and with the Commission's mechanisms; and, lastly, the opening of forums for dialogue in order to facilitate the participation of civil society in policy-making in the country. The Government was therefore establishing new relationships with all actors in society and the dialogue with civil-society organizations had become institutionalized.

75. With regard to the two initiatives being considered under agenda item 11, namely, the preparation of a draft binding instrument for the protection of persons from enforced disappearances and the adoption of an optional protocol to the Convention against Torture, she acknowledged that Mexican society unfortunately had experience of both kinds of crime and was determined to eradicate them. The President had recently appointed a special prosecutor to investigate disappearances in Mexico in the 1970s and 1980s and to prosecute the perpetrators. Although Mexico had ratified the Inter-American Convention on Forced Disappearance of Persons, it believed, like many other countries, that a universal instrument such as the one provided for in the draft resolution to be submitted for the consideration of the Commission was

absolutely essential. With regard to the second initiative, she welcomed the successful completion of the work of the Working Group on the Draft Optional Protocol to the Convention against Torture. Lastly, she welcomed the imminent entry into force of the Rome Statute of the International Criminal Court.

76. Mr. VIEIRA (Brazil) said that, despite the progress made since the adoption of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, blatant violations of those rights continued to occur around the world and a wide gap continued to exist between theory and practice. A determining factor in the effective enjoyment of human rights was the acceptance by States of international monitoring. For that reason, his Government was in favour of enhancing the dialogue between States and the monitoring bodies set up by international institutions. Thus, Brazil had received six visits from special rapporteurs and had decided to extend an open invitation to all rapporteurs. On the domestic front, in terms of prevention, the National Council for the Protection of the Rights of the Person, established in 1964, had become the main human rights monitoring body in all States of the Federation. The Council sent fact-finding committees to shed light on reported violations. A national campaign against torture had also been successfully launched and seminars were to be organized for judges to make them aware of the need to bring torturers to justice and punish them. Lastly, his delegation would be submitting to the Commission a draft resolution affirming the incompatibility of democracy and racism.

77. Mr. HENRIKSEN (Observer for Norway) said that the rule of law was a precondition for the exercise of human rights and fundamental freedoms and for the protection of every person. In that connection, he wished to thank the special rapporteurs for their extremely useful work and called on all States to respond positively to their requests.

78. Torture could never be justified. Norway stressed the need to ensure the effective implementation of international standards on protection against torture and other cruel, inhuman or degrading treatment or punishment and to strengthen the international system for the prevention of torture. He therefore supported the draft optional protocol to the Convention against Torture.

79. Freedom of expression and opinion, including freedom of the press and media, was a basic prerequisite for democracy. He stressed the need for women to take part in political and civil life at all levels, as the participation of women was the sign of a truly democratic and well-functioning society.

80. Mr. MENON (Observer for Singapore) said that one of the reasons his Government had introduced military conscription was to give members of the different national communities a keener sense of national identity. National service was perfectly suited to the circumstances and realities in Singapore. He criticized the draft resolution on conscientious objection submitted by, among others, the delegation of Croatia. In his opinion, the sponsors were trying to impose their own beliefs on everyone else, to the detriment of States' freedom of choice. They ignored the fact that national defence was a fundamental sovereign right under international law and that it was outside the framework provided by international human rights instruments. In conclusion, he said that the Commission should not become a forum for some States to try to impose their value systems on others.

81. Ms. PICTET-ALTHANN (Observer for Malta) said that the draft resolution on religious freedom deserved the support of the Commission. She drew attention to the situation in the occupied Palestinian territories, noting that on 14 March 2002 the Holy Family Hospital, which was run by the Order of Malta in Bethlehem, had been shelled and come under heavy machine-gun fire. The functioning of that maternity hospital, which treated 14,000 people a year, was still severely limited. She pointed out that the attacks were a flagrant violation of the fourth Geneva Convention and expressed concern at the escalation of violence in the Holy Land, which primarily affected the civilian population. She called for an urgent solution to the conflict: nothing short of a return to the negotiating table followed by the establishment of a just and lasting peace bore thinking about.

82. Mr. COUTAU (International Committee of the Red Cross (ICRC)), referring to a fundamental aspect of humanitarian law, namely, the right of families to know the fate of family members about whom they had received no information owing to a situation of armed conflict or internal violence, said that the lack of news about a loved one was a tragic reality that could harm the process of reconciliation and the establishment of a lasting peace. ICRC therefore aimed to prevent disappearances, restore family ties and find out what had happened to persons whose families had no news of them. Often, however, it was not able to carry out its mandate because of a lack of political will on the part of the authorities or parties concerned.

83. ICRC had decided to undertake an in-depth study on that issue. Initially, workshops on the problem of disappearances would be organized for governmental and/or non-governmental experts. Between May and September 2002, they should produce recommendations and define best practices to be followed in that area. Subsequently, ICRC would hold an international conference from 19 to 21 February 2003, at which the results of the work done in the first phase would be presented. ICRC hoped that the outcome of the conference would be of practical use to the political actors and humanitarian workers on the ground and was determined to pursue and develop its activities aimed at putting a stop to disappearances and ensuring that families' right to know, which was recognized by the entire international community, was respected.

84. Mr. TAWFIQ (Observer for Iraq) said that his country had ratified the International Covenant on Civil and Political Rights in 1970 and had enacted several laws to ensure effective enjoyment of those rights. Under the 1974 law on autonomy for Iraqi Kurds the Kurds had been allowed to set up their own institutions. The right to set up political parties, trade unions and associations was recognized by law in Iraq, as was the right freely to express an opinion and practise a religion. The people were regularly consulted by referendum and could make themselves heard at the municipal level.

85. Unfortunately, certain countries denied others the right to manage their own internal affairs as they wished. For example, the United States and the United Kingdom had for four years imposed an iniquitous embargo on Iraq, carried out daily attacks on the country without a mandate from the Security Council and provided covert assistance to the opposition parties in Iraq. The United States had recently stepped up its aggression against Iraq, and he called on all countries to ensure observance of the Charter of the United Nations with respect to non-aggression and non-interference in the internal affairs of States.

86. Mr. AL-BADER (Observer for Kuwait) said that, at its previous session, the Commission on Human Rights had rightly highlighted the question of terrorism. In its resolution 37/2001, the Commission had recalled that the most essential and basic human right was the right to life. Kuwait had been one of the first countries to suffer from terrorism and welcomed the cooperation of the friendly countries that had helped it with the task of reconstruction. The lesson learned in the past had not been forgotten. His Government firmly condemned all acts of terrorism, whoever the perpetrators, and demanded that the latter, as well as those who funded their activities, should not be allowed to go unpunished. However, terrorism should not be confused with resistance and Islam should not be associated with the scourge of terrorism, as Islam had always been a religion of peace, fraternity and tolerance.

The meeting rose at 6 p.m.

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COMMISSION ON HUMAN RIGHTS

Fifty-eighth session

SUMMARY RECORD OF THE 37th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 12 April 2002, at 10 a.m.

Chairperson:	Mr. JAKUBOWSKI	(Poland)
later:	Mr. LEWALTER (Vice-Chairperson)	(Germany)
later:	Mr. JAKUBOWSKI (Chairperson)	(Poland)

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The meeting was called to order at 10.10 a.m.

STATEMENT BY THE SECRETARY-GENERAL

1. The SECRETARY-GENERAL said that it was always a pleasure for him to join the meetings of the Commission. Ever since he had become Secretary-General, he had sought to place human rights at the centre of all that the United Nations did. He therefore considered the Commission's work to be very important and paid particular attention to it.

2. No less obviously, he attached great importance to the work of the United Nations High Commissioner for Human Rights and her staff, some of whom took great personal risks in the cause of human rights. He paid a special tribute to those who had lost their lives in the line of duty.

3. Over the past five years, the United Nations had gained immensely from the presence of Mrs. Mary Robinson as High Commissioner. She had brought to the office not only the great prestige she had earned in her earlier career but also - and more importantly - an unflagging and fearless determination to uphold the cause of human rights throughout the world. The poor, the oppressed and the victims of injustice in every country had reason to be grateful to her. The task of finding a worthy successor was one of the most challenging assignments facing him. On behalf of the whole world community, he thanked the High Commissioner for what she had done. He wished her well in the future and expressed the hope - but also the confidence - that, in whatever capacity she served, her talents would continue to be deployed in the cause of justice and universal human rights. He was also glad that she would remain in her post until September 2002, working with her usual energy.

4. The current session of the Commission must be one of the most important it had ever held. It met under the shadow of the desperate situation in Israel and the occupied Palestinian territories, which had become an affront to the conscience of mankind. He would revert to the subject at the end of his address. It also met in the shadow of what had happened in the United States on 11 September 2001 and of what had happened in many countries since then, as a direct or indirect consequence. On that day, several thousand human beings had been brutally deprived of the most fundamental of all human rights - the right to life - by a premeditated act of utter nihilism, which many had called a crime against humanity.

5. That abominable act had expressed a state of mind in which human rights ceased to have any meaning. The precise motives of those who had undertaken it were not known and might never be known. It had to be assumed that, for whatever reason, they had reached a point where human life - their own and other people's - had lost all value in their eyes. They had also reached the point where they were prepared to use any means, no matter how callous, cruel or destructive, to achieve their political objective.

6. That was the scale of the challenge. That was the attitude that the international community must confront, combat and refute, wherever it might arise. It followed that security could not be achieved by sacrificing human rights. To try to do so would hand the terrorists a

victory beyond their dreams. On the contrary, he was convinced that greater respect for human rights, along with democracy and social justice, would, in the long term, prove the only effective prophylactic against terror.

7. The struggle to give everyone on the planet a reason to value his or her own rights and to respect those of others must continue. At the same time, the primacy of the rule of law and the principle that certain acts were so evil in themselves that no cause, however noble, could justify their use must be constantly reaffirmed. The end did not justify the means. Instead, the means tarnished, and might pervert, the end.

8. No doubt there was a hard core of terrorists whose minds were already beyond reach and against whom the international community had no choice but to defend itself physically, with great vigilance at all times, dispensing exemplary justice when they were captured and, when necessary, using military force. It was essential, however, to act always in accordance with the rule of law. In defending itself, the international community must be careful not to play into the enemy's hands or to act as his recruiting sergeant.

9. Vigilance was essential but, in exercising it, it was important not to lose sight of such fundamental principles as the presumption of innocence until guilt was proved. Nor must it be forgotten that even the guilty retained certain basic rights such as those laid down in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Governments must avoid falling into the trap of thinking their aim so vital that even the worst of means could be used to reach it. That way, instead of preventing terrorism, he feared they would encourage it. Governments should rather ensure that their security measures were firmly founded in law. In defending the rule of law, they must themselves be bound by law.

10. As for justice, it must indeed be both the means and the end of the struggle against terrorism. Mass murderers must no longer go unpunished, whether they were terrorists, warlords or dictators. That was why he so greatly welcomed the historic milestone passed the previous day when the threshold of 60 ratifications of the Rome Statute of the International Criminal Court had been achieved. The Statute would come into force on 1 July 2002 and the Court should be operational by 2003.

11. The establishment of the Court would not detract from the responsibility of States to prosecute and punish war crimes and crimes against humanity committed by their citizens or within their jurisdiction. Nor would it undermine their ability to do so. On the contrary, it would give all States a strong incentive to improve their standards in that respect, since the Court would have jurisdiction only where the State primarily concerned was either unable or unwilling to proceed. Over time, he believed that the practice and procedures of the Court would provide a benchmark of international justice against which the standards of all States could be measured.

12. It was a well-known principle that justice must not only be done but must also be clearly seen to be done. When criminals were punished, no fair-minded person should be able to doubt the justice of either the conviction or the sentence.

13. Justice did not mean only punishment of the guilty. It must also mean fair treatment of the innocent. It was essential therefore not to place whole communities under suspicion and subject them to harassment because of acts committed by some of their members. Nor must the struggle against terrorism be allowed to become a pretext for the suppression of legitimate opposition or dissent. In 1999, he had told the Commission that no Government had the right to hide behind national sovereignty in order to violate the human rights or fundamental freedoms of its people. That point was currently more widely accepted than it had been at the time. Indeed, it was well made in the recent report by the independent International Commission on Intervention and State Sovereignty, entitled The Responsibility to Protect, which had addressed all aspects of the problem. After broad consultations conducted in every region of the world, that Commission had concluded that there was a wide understanding that States had the responsibility to uphold and protect the human rights of their citizens. When they failed or themselves became the threat from which their citizens needed protection, the responsibility fell on the international community.

14. Terrorism was one of the threats against which States had not only the right but the duty to protect their citizens. They must also, however, take the greatest care to ensure that counter-terrorism did not, any more than sovereignty, become an all-embracing concept used to cloak or justify human rights violations. Any sacrifice of fundamental freedoms in the struggle against terror was not only wrong in itself but would ultimately be self-defeating.

15. The greatest effort was needed to ensure fair treatment for those most exposed to prejudice, such as religious and other minorities, as well as migrants. Never had the need for tolerance been greater. Diversity was, after all, what gave the human species its splendour and enabled it to make progress, as peoples of different experience and culture learned from one another. When people failed to respect each other's right to different beliefs and forms of worship, or to form different communities with their own ways of life, their humanity was diminished. What could not and must not be tolerated was the use of violence by members of one community against another. All attacks on mosques, churches, synagogues and other centres of communal life must stop.

16. Such issues had already been on the Commission's agenda before 11 September 2001. Indeed, the very week before the tragic events of that date, they had been under discussion at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. His point was to stress that what had happened on 11 September had not diminished the importance of the agenda but had, if anything, increased it. The need for effective mechanisms to protect minorities and other vulnerable groups was as great as it had ever been.

17. The Commission on Human Rights had itself a vital role to play in devising and overseeing such mechanisms. In the struggle against terrorism, its role must be complementary to that of the Security Council. Of course, the Council and its Counter-Terrorism Committee must themselves be sensitive to human rights as they pursued their vital work. However, whereas the Council had primary responsibility for the maintenance of international peace and security, the Commission had a particular responsibility to promote the international implementation of human rights. It must therefore make every effort to protect those threatened by human rights violations, whether resulting directly from terrorism or committed in the name of counter-terrorism. In that context, he noted that the Commission had decided to send a

mission, led by the High Commissioner, to the Middle East. The political and the human rights bodies must clearly understand that their tasks were complementary and make a real effort to work coherently together. Only thus could there be an adequate response to the challenges facing the international community.

18. Turning to the question of military force, he said that it might be necessary, in certain cases, to defend a country against terrorism, as against other forms of assault. Care must be taken, however, to use force only in self-defence or in accordance with Security Council decisions. And when it was used, it should be used within the law: the international law of war. Targeting civilians, and the disproportionate use of force beyond legitimate military objectives, were illegal practices which must be rejected. Nor could military action be considered legitimate self-defence when used to perpetuate the occupation of foreign territory.

19. Moral clarity and intellectual accuracy were required in every judgement on the use of force by States. The same must apply, however, when judging the actions of armed resistance movements. The killing of innocent civilians violated international law and undermined the legitimacy of the cause it purported to serve. That, of course, applied also to suicide bombings aimed at civilians, which were as indiscriminate and morally repugnant as they were politically harmful.

20. Such considerations applied particularly, needless to say, to current events in the Middle East, where international norms of human rights and humanitarian law were being violated on a massive scale. Everyone must be deeply upset by the spectacle of so many unnecessary deaths, so much destruction and distress, so much erosion of restraints and blunted moral sensibility. He had already made his position clear in the Security Council and in direct contacts with the leaders of both sides.

21. The parties were locked in the logic of war. In order to move them to the logic of peace and bring peace and security again within reach, the core issues - occupation, violence, including terrorism, and the economic plight of the Palestinians - must be addressed. It must also be remembered that one cause of the current situation had been the denial of fundamental human rights. The task of the international community and of the Commission was to help bring both parties back to civilized standards of conduct; to insist on respect for human rights and humanitarian law; to demand access for humanitarian organizations; and to press for a return to respect for freedom of expression.

22. A start would be for the leaders of both sides to make an immediate declaration of commitment to respect basic norms of human rights and humanitarian law. He solemnly called upon them to take that step forthwith.

23. One of the lessons of the history of the United Nations was that it could not afford to be neutral in the face of great moral challenges. It was currently faced with such a moral challenge. Wanton disregard for human rights and humanitarian law could not be accepted. Those responsible must be made to understand that they faced the verdict of history.

24. He pleaded once again for respect for international law, including international humanitarian law, whenever force was used, whether by States or by resistance movements. In

particular, it was essential to ensure respect for the four Geneva Conventions. Their purpose was crystal clear and their wording broad enough to apply to all armed conflicts, no matter what the specific circumstances. There was no need to reinterpret them. What was vital was that they should be obeyed.

STATEMENT BY THE DEPUTY MINISTER FOR FOREIGN AFFAIRS OF ITALY

25. Ms. BONIVER (Italy) said that she was very pleased at being able to address the Commission on the same day as the Secretary-General, especially after the announcement he had made the previous day of the entry into force of the Rome Statute of the International Criminal Court. Her country, which had striven for that goal, welcomed the announcement as a historic step forward that would provide the international community with an impartial, permanent instrument to punish the worst crimes against humanity and human rights. She firmly believed that the establishment of the Court would go a long way towards preventing such crimes.

26. Her Government rejoiced, on the one hand, at the positive signs revealing a strengthening of the world's moral conscience but, on the other, mourned the far too many innocent victims of the vicious blend of violence and hatred that engendered terrorism. The events of 11 September 2001 had shown, in a most cruel and devastating way, that nobody was immune from the disease of terrorism, whose danger was permanently looming. The Italian people had participated profoundly in the grief of the citizens of New York and the people of the United States as a whole, inspired by a feeling of political commitment and human solidarity.

27. They were equally concerned and moved by the terrible plight of the Palestinian people and by the terrorist attacks against innocent Israeli civilians who had sought refuge and security in that land. The number of victims of that dreadful new form of suicide terrorism were known, but those of the Israeli military action, especially over the past two weeks, were not. She therefore urged the Israeli Government to allow immediate humanitarian relief to reach the no doubt numerous victims who waited to be relieved, as was their right according to the most basic humanitarian conventions.

28. It should come as no surprise that terrorism and human rights lay at the very heart of the Commission's work as never before. That that was so was a positive confirmation and an encouraging token of the existence of a common commitment against terrorism, which must not be allowed to diminish the guarantees underpinning inalienable human rights. The Italian experience in fighting terrorism in the 1970s had clearly shown that terrorist groups could be defeated without the suspension of constitutional guarantees. On the contrary, victory had been achieved by strengthening general support for democracy.

29. Nobody was safe from the threat of terrorism, which could flare up unexpectedly and often struck down the best people. A recent case had been that of Marco Biagi, an upright and brave social reformer and a respected adviser to her Government, who had been murdered a month previously in Bologna, in a way that was reminiscent of the slaying of the Christian Democrat leader Aldo Moro and many other loyal servants of the State.

30. She wished to explain to the Commission the rationale behind two recent decisions by her delegation. First of all, it had decided to withdraw its candidature for membership of the

Commission at its next session because of its wish to promote the principle of equal rotation amongst Western countries in the Commission. The reasoning was not solely that the United States should be involved in the Commission's work, which would otherwise lose credibility; her delegation also hoped that the return of the United States would provide a real opportunity for fruitful work to promote human rights on the basis of shared values and a harmonized approach. Secondly, she drew attention to the fact that Italy had recently welcomed the relevant Commission mechanisms in connection with allegations relating to the behaviour of the Italian police at the G-8 Genoa Summit and the issue of the independence of the judiciary. She could obviously not deal with the substance of the issues, but she wished to express her Government's strong belief in the usefulness of involvement with the international community. It would continue to cooperate fully with Commission mechanisms.

31. Her Government attached particular importance to the issue of refugees, whose human rights were violated first of all within their own countries and subsequently - as the United Nations High Commissioner for Refugees had pointed out - again in the camps, where 12 million people lived and where one generation after another eked out a living without any real prospect of returning to normal life, relying on inadequate assistance and exposed to all kinds of abuse and violence. It was the responsibility of the whole international community to provide refugees with decent assistance and real prospects of returning to their homeland or, should that prove impossible, of settling for a new life in a receiving country, in accordance with the Convention relating to the Status of Refugees.

32. Afghanistan, a country she had recently visited and whose fragile humanitarian situation had impressed her deeply, provided a test case of how to tackle the complicated, post-conflict process. The physical reconstruction of the country, after long years of internecine strife and isolation, required a commitment by the entire international community. Not even that would suffice, however, unless it was accompanied by full respect for human rights, the establishment of democratic institutions to ensure the rule of law and the consolidation of mutual trust amongst the country's different ethnic components. The main elements underpinning national reconciliation were to be found in respect for international standards on fundamental rights and liberties. In that framework, her Government was prepared to finance the High Commissioner's project for the establishment of a National Human Rights Commission in Afghanistan.

33. Her Government considered torture and the death penalty to be the most horrendous violations of human rights. The draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contained all the innovations necessary to prevent that hideous practice. Italian institutions and civil society had devoted great efforts to abolishing the death penalty, initially de facto and subsequently de jure. As the Presidency had solemnly confirmed, the European Union would continue to be at the forefront of that struggle.

34. The issue of women and human rights seemed truly emblematic for the whole human rights discourse. Although gender discrimination and violations of women's human rights were still a worldwide plague, it was reductive and paternalistic to see women only as victims. They should also be seen as precious elements in the human rights arena. The initiative entitled "Strengthening the Role of Women in Conflict Prevention", adopted by the G-8 foreign ministers in July 2001, stated that women were negotiators, peacemakers and advisers, whose

efforts were vital to sustainable peace. That kind of reasoning deserved to be reiterated and implemented: women should be active subjects in the human rights field and not only objects of concern.

35. With regard to the widening debate on the need to depoliticize the Commission's work so as to render it less amenable to political confrontation and more objective and functional in its approach, her Government believed that human rights represented a political top priority in themselves and must therefore be kept under observation, with due regard for their unavoidable political dimension. Although there was a core of human rights with universal validity, whatever the historic and cultural contexts, there was still scope for a cultural dialogue which had not really begun and which implied a human and intellectual eagerness to know and understand better the values, history, philosophy, traditions and feelings of other peoples. Diversity could enrich the dialogue between different civilizations, particularly when it came to the implementation and defence of human rights.

36. During its "sabbatical leave" from the Commission, her Government would continue to make a full contribution as an observer and within the European Union. It would also reflect on the possibility of hosting a cultural project complementing and integrating the political debate on human rights. Such a move was crucial in the current circumstances, where new opportunities appeared, in the midst of painful confrontations, for fruitful dialogue in various fields, including religion. Her Government intended to explore that issue with all interested countries, beginning with the United States, to which it passed the torch of membership of the Commission.

37. Lastly, her Government wished to express its sincerest appreciation and gratitude to the High Commissioner, a courageous woman who had been uncompromising when necessary, for the passion she had shown in carrying out her mandate. It was to be hoped that there were others who would be as passionate about strengthening human rights worldwide.

STATEMENT BY THE MINISTER FOR FOREIGN AFFAIRS OF LIECHTENSTEIN

38. Mr. WALCH (Liechtenstein) said that, the interest shown by the Secretary-General in the Commission's work and the passionate commitment of the High Commissioner to her almost impossible job had contributed greatly to the credibility of the Commission, thus giving added weight to its efforts for human rights.

39. Terrorism was the most pressing issue facing the international community in the aftermath of 11 September 2001 and all States must continue to work together to combat terrorism; unilateralism, self-interest and lack of transparency could not but weaken cooperative efforts. His Government had cooperated fully with the Counter-Terrorism Committee, the Financial Action Task Force (FATF) and other mechanisms. The Commission, to maintain its credibility, must address terrorism from a human rights perspective in an unequivocal and legally sound manner.

40. In the first place, terrorist activities had an impact on human rights and, although the promotion and protection of human rights was the responsibility of States, which were therefore accountable for human rights violations, the role of non-state actors must also be addressed in a meaningful and politically sustainable manner. It was important that the peoples of the world

themselves understood the human rights issues involved in terrorism. He therefore welcomed the imminent entry into force of the Rome Statute of the International Criminal Court as a historic step forward. The Statute did not distinguish between State agents and non-state actors in respect of criminal responsibility.

41. A balance must be struck between protection of human rights and the fight against terrorism. Existing human rights law already defined a set of human rights which could be derogated from under clearly defined circumstances, while other human rights such as the right to life, freedom from torture and freedom of thought, conscience and religion must be upheld at all times. Those standards were among the most important achievements of the United Nations and the current Middle-East crisis proved the need for fully respecting them. The international community must not compromise its own values in the fight against those who were determined to destroy such values. The fight against terrorism must take into account the human rights dimension; the credibility thus acquired would ensure its effectiveness in the long run.

42. The debate on terrorism must also address its root causes, foremost among them extreme poverty, which was not only a human rights violation in itself but also led to social marginalization and exclusion. The growth of inequality was a major challenge and he stressed that globalization would succeed only if it succeeded for everyone, a goal which was necessary not only in the name of solidarity but also in the name of enlightened self-interest. His Government remained committed to the Millennium Development Goals and he noted that the recent Monterrey Conference had been an important first step towards reaching them. The task of the Commission was to emphasize the human rights aspect of the right to development and he recalled that the Declaration on the Right to Development put the human person at the centre of development efforts. Only the full and active involvement of all individuals in their respective societies could lead to sustainable development.

43. The Commission could further enhance its credibility through reform, with a stronger focus in its agenda and showing more discipline in its methods of work. Reforms adopted at the current session in response to budgetary and time constraints had been effective. More meeting time was not the answer; the Commission must seize the opportunity created by the current crisis to show greater discipline and make the most efficient use possible of its time.

44. Mr. Lewalter (Germany), Vice-Chairperson, took the Chair.

STATEMENT BY THE ASSISTANT DEPUTY MINISTER FOR POLITICAL AFFAIRS OF SAUDI ARABIA

45. Prince Torki AL-SAUD (Saudi Arabia), having expressed his Government's deep appreciation of the role played by the High Commissioner in promoting human rights throughout the world, said that the international community was currently dealing with the aftermath of the shameful and odious terrorist attack against the United States on 11 September 2001. That attack was an outrage to all peace-loving nations, peoples and religions, including Islam, which condemned all acts of terrorism against the innocent as flagrant violations of its moral principles. His Government had condemned those acts, which had given rise to measures that had affected the spirit of transparency and trust prevailing among States and peoples and hampered efforts to promote a rapprochement among civilizations and cultures. Bilateral relations had also been

affected and he supported the need for joint international efforts to combat terrorism, tackle its causes and defeat those who would incite to violence and discrimination and bring about a return to the ages of conflict and instability.

46. Before 11 September, human rights had become the overriding preoccupation of the United Nations, as clearly illustrated by the establishment of human rights mechanisms, the emergence of a number of non-governmental human rights organizations and the convening of international conferences, most recently the Durban Conference. The Commission's efforts assumed even greater importance given the grave circumstances currently facing the international community, which necessitated constructive dialogue and transparency in seeking to adopt collective measures under United Nations auspices.

47. The current crisis was the result of a breakdown in human dialogue as well as of the existence of irresponsible voices which sought to provoke conflict and discrimination in order to weaken international endeavours to promote and protect human rights. The international community must therefore adopt a prudent, objective and carefully considered approach with a view to emerging from the crisis still committed to constructive dialogue and transparency and opposed to all forms of discrimination and segregation.

48. Although 2001 had been the International Year of Mobilization against Racism, Racial Discrimination, Xenophobia and Related Intolerance and in spite of the World Conference on the subject at Durban, the world had witnessed after 11 September a wave of xenophobia against Arabs and Muslims which was incompatible with the Commission's aims and purposes. He recalled that, several years previously, the Islamic Group had submitted to the Commission a draft resolution on defamation of religions, which had been adopted, and expressed grave concern at attempts to exploit the tragedy and wrongfully point the finger of suspicion at Islam and Muslims. He was also concerned at discrimination against religious beliefs in some societies and at attempts to associate Islam with terrorism and bigotry, the result being that in various countries Muslims were being subjected to discrimination and aggression and their places of worship attacked.

49. The concept of human rights had evolved through a long process of social, political and philosophical development deeply rooted in religious, ideological, political and social doctrines. Islam had contributed significantly to the principles and values of human rights for the purpose of guaranteeing a decent and stable life for all human beings by defining their rights in an unambiguous and unquestionable manner. He hoped that the recent forum in Istanbul and the symposium organized by the Organization of the Islamic Conference (OIC) in Geneva a few days previously had enriched understanding of human rights, and given a positive impetus to dialogue among civilizations so as to promote transparency and dispel doubts about the best course of action.

50. His Government supported the noble concepts embodied in the international human rights instruments and, in a period of barely six years, had developed a Code of Criminal Procedure, a Code of Civil Procedure and a Code of Practice for Lawyers, which reflected the progress made in the protection and development of human rights domestically and the incorporation of international standards. It had also acceded to four of the six principal international human rights instruments and was in the process of acceding to the remaining two.

It had consistently cooperated with the United Nations human rights mechanisms, human rights divisions had been established in the relevant government agencies and a governmental and non-governmental human rights commission would soon be established.

51. At the international level, his Government made voluntary contributions to human rights bodies and, with a view to promoting one of the principal human rights, the right to development, it allocated 4 per cent of its gross national product (GNP) to foreign aid, the highest percentage of any country. Over the previous 20 years, in fact, it had allocated US$ 76 billion for the purpose. He invited other States to do likewise in order to promote development in the poorer countries.

52. No discussion of human rights and discrimination could ignore the plight of the Palestinian people, who were subject to violence and inhuman treatment and the destruction of their economic infrastructure as a result of the ongoing blockades to which Palestinians and their leaders were subjected by the continuing Israeli military occupation. That occupation was incompatible with the purposes and principles of the Charter of the United Nations, constituted a gross violation of human rights and international humanitarian law and posed a grave threat to international peace and security.

53. His Government had consistently sought to achieve peace: in 1982, it had proposed the "Fez Initiative", adopted by the Arab States, calling on Israel to withdraw from the occupied territories in return for a peaceful existence within secure borders. Israel had, however, failed to respond to that initiative. Despite the lack of progress and the deteriorating situation in the Palestinian territories, Crown Prince Abdullah had recently put forward a peace initiative based on the principle of land for peace and the resolutions of United Nations bodies. It would guarantee peace and security for all, normal relations between Israel and the Arab States in return for full withdrawal from the occupied Arab territories, the establishment of a Palestinian State with its capital in East Jerusalem and settlement of the refugee question in accordance with the relevant resolutions. That initiative had been adopted unanimously at the recent Arab Summit Conference in Beirut, which had also expressed the desire of the Arab States to achieve a lasting, just and comprehensive peace in the Middle East in a manner consistent with the international community's responsibility to promote peace and security.

54. Despite the adoption of that initiative by the Arab States and the positive reaction of the international community, the Israeli Government continued to take the path of violence, placing a defenceless people and its leaders under siege and attempting to eliminate the Palestinian Authority by subjecting its infrastructure to even greater damage and devastation. The Commission should endorse and support the initiative and should emphasize the need for an immediate and full Israeli withdrawal from all the Palestinian territories so that all efforts and resources could be devoted to furtherance of the peace process in the best interests of the Palestinians, Israelis, the Arabs of the region and the world as a whole. Tolerance, cooperation, equal treatment and respect for others must triumph over discrimination, racism and assertions of superiority.

REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS (agenda item 4) (continued) (E/CN.4/2002/L.8/Rev.1)

55. Draft resolution on strengthening of the Office of the United Nations High Commissioner for Human Rights (E/CN.4/2002/L.8/Rev.1)

56. Mr. PUJA (Indonesia), introducing the draft resolution, said that the representatives of the Libyan Arab Jamahiriya, the Syrian Arab Republic and Venezuela had also become sponsors. The draft resolution called for the allocation of increased resources to the Office of the High Commissioner for Human Rights (OHCHR) and for increased flexibility in the management of those resources and regretted that the response to the High Commissioner's request to States not to earmark their voluntary contributions for specific purposes had not been satisfactory. Informal consultations on the draft resolution had taken place in an atmosphere of positive cooperation and he hoped it would be adopted by consensus.

57. Ms. WONG (Secretariat) said that, under operative paragraphs 5, 10 and 12 of the draft resolution, the Commission would reiterate the need to ensure that all necessary financial, material and personal resources were provided from the regular budget without delay to the human rights programme, to enable OHCHR to carry out its mandates efficiently, effectively and expeditiously; recommend that the Economic and Social Council and the General Assembly provide OHCHR with ways and means commensurate to its increasing tasks, as well as more resources for its special rapporteurs; and emphasize the need for an increase in the allocation of resources from within the regular budget for advisory services and technical cooperation in the field of human rights.

58. In resolution A/56/254 A, the General Assembly had approved resources under the regular budget of $44,727,100 for OHCHR for the biennium 2002-2003. The General Assembly had been informed that OHCHR had projected that extrabudgetary resources of $62,947,300 might be made available for OHCHR during the same period.

59. She drew attention to resolution 45/248, part B, section VI, in which the General Assembly reaffirmed that the Fifth Committee was its appropriate Main Committee entrusted with responsibilities for administrative and budgetary matters, reaffirmed the role of the Advisory Committee on Administrative and Budgetary Questions (ACABQ), expressed concern at the tendency of its substantive Committees and other intergovernmental bodies to involve themselves in administrative and budgetary matters, and invited the Secretary-General to provide all intergovernmental bodies with the required information regarding procedures for administrative and budgetary matters.

60. The draft resolution was adopted.

61. Ms. GERVAIS-VIDRICAIRE (Canada) said that her delegation had supported the draft resolution despite some reservations with regard to paragraph 1, which addressed the question of geographical representation within OHCHR in a way that was not entirely consistent with Article 101 of the Charter of the United Nations. Under Article 101, the Secretary-General had

the sole authority for appointing staff under regulations established by the General Assembly, with a view to securing the highest state of efficiency, competency and integrity, paying due regard to the importance of recruiting the staff on as wide a geographical basis as possible.

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OF ALIEN DOMINATION OR FOREIGN OCCUPATION (agenda item 5) (continued) (E/CN.4/2002/L.4, L.6 and L.7)

Draft resolution on the situation in occupied Palestine (E/CN.4/2002/L.4)

62. Mr. ATTAR (Saudi Arabia), introducing the draft resolution, said that the right of peoples to self-determination had been on the agenda of the United Nations for many years. The principle of self-determination was enshrined in Articles 1 and 55 of the Charter of the United Nations, the relevant resolutions and declarations of United Nations bodies, and the provisions of the International Covenants on Human Rights. The General Assembly had adopted many resolutions reaffirming the legitimate right of the Palestinian people to self-determination.

63. A change had been made to the eighth preambular paragraph, which should read: "*Welcoming and endorsing* the Arab peace initiative based on the proposals of His Royal Highness Crown Prince Abdullah Ibn Abdul-Aziz of the Kingdom of Saudi Arabia".

64. In view of its importance, he hoped that the Commission would be able to adopt the draft decision by consensus. He was convinced that recognizing the legitimate right of the Palestinian people to self-determination would guarantee peace and security in the Middle East.

65. Mr. LEBAKINE (Secretary of the Commission) said that the representatives of Austria, Belgium, France, Germany, Italy, Portugal, Spain, Sweden, Togo and the United Kingdom and the observers for Bangladesh, Denmark, Finland, Greece, Iceland, Ireland, Luxembourg, Madagascar, Malta, Netherlands, Norway and Turkey had become sponsors of the draft resolution, which had no financial implications.

66. Mr. PEREZ-VILLANUEVA y TOVAR (Spain), speaking on behalf of the European Union and of the associated countries of Bulgaria, Estonia, Hungary, Malta, Slovakia and Turkey, said that the Union endorsed the draft resolution which did not in any way pre-empt the outcome of the negotiations between the parties to the dispute. The Palestinian people had a legitimate and inalienable right to self-determination, including the right to establish a sovereign and independent State. Furthermore, the creation of a sovereign, democratic and peaceful Palestinian State, on the basis of existing agreements and negotiation, was the best way to guarantee Israel's security and recognition as an equal partner in the region. Constructive dialogue was the only way to achieve lasting peace. Therefore, he urged both parties to resume peace negotiations and to find a solution in accordance with the relevant Security Council resolutions, including resolution 1397 (2002) which affirmed a vision of a region in which two States, Israel and Palestine, lived side by side within secure and recognized borders. The Union was determined to make a significant contribution towards the future peace, stability and prosperity of the Middle East region.

67. Mr. RAMLAWI (Observer for Palestine) said that the question of Palestine had been on the agenda of the United Nations for over 30 years. The right to self-determination was recognized under international humanitarian law, and was enshrined in the provisions of the International Covenants on Human Rights. The Commission had adopted many resolutions affirming the legitimate right of the Palestinian people to self-determination, but Israel had chosen to disregard them and continued to cause great harm to the lives, land and property of the Palestinian people. He was confident that the Commission would adopt the draft resolution which represented the triumph of its values and would help to put an end to military domination and all the crimes perpetrated against the people of Palestine. The Commission must do its utmost to guarantee the Palestinian people their right to self-determination.

68. Mr. LEVY (Observer for Israel) said that, although the issue of self-determination for the Palestinian people did have some impact on human rights, it was essentially part of a much broader political context to be determined in the bilateral track of negotiations between Israel and Palestine. Israel supported the principle of self-determination and the right of all peoples to govern themselves, including those in the Middle East.

69. More than 20 years previously, in the framework of the Camp David meetings, Israel had recognized the legitimate right of the Palestinian people and their just requirements. Through the Oslo process, Israel and the Palestinians had agreed to recognize their mutual legitimate political rights, to be achieved within the framework of the peace negotiations on a permanent solution to the conflict.

70. The two parties had recently negotiated outstanding permanent status issues, including the future status of the territories under dispute. However, negotiations at the Camp David summit had broken off as a result of the strategic choice of the Palestinians to ignore the Israeli proposals and to embark on a campaign of violence. Once the violence had ended, peace talks were bound to resume.

71. He urged the Commission not to pre-empt the outcome of the issue by adopting the draft resolution, which would only undermine attempts to reach a successful conclusion of the negotiations. The matter should be left for the parties themselves to resolve.

72. Mr. ARENALES FORNO (Guatemala), speaking in explanation of vote before the voting, said his Government recognized the right of the Palestinian people to self-determination through the creation of a Palestinian State. However, until all countries in the region expressly accepted Israel's right to exist as a State, in accordance with Security Council resolutions 242 (1967), 338 (1973), 1397 (2002) and 1402 (2002), the only way his delegation could support the inalienable right of the Palestinian people to self-determination was within the framework of negotiations between the two parties and the express acceptance by all the countries in the region of the agreements reached.

73. The questioning since 1948 of the creation of an Israeli State to live side by side with a Palestinian State, together with the many wars and acts of terrorism tolerated and encouraged by certain political and religious leaders, made the right of Jewish people to self-determination very vulnerable.

74. His delegation could support only a resolution that addressed the right of both peoples to self-determination and provided for two States with internationally recognized and secure borders. The draft resolution would not help to bring about a negotiated settlement that would allow both parties to live in peace. Therefore, while recognizing the right of the Palestinian people to self-determination, his delegation would vote against the draft resolution.

75. At the request of the representative of Guatemala, a recorded vote was taken on the draft resolution.

In favour: Algeria, Argentina, Armenia, Austria, Bahrain, Belgium, Brazil, Burundi, Cameroon, Canada, Chile, China, Costa Rica, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Ecuador, France, Germany, India, Indonesia, Italy, Japan, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Nigeria, Pakistan, Peru, Poland, Portugal, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Sierra Leone, South Africa, Spain, Sudan, Swaziland, Sweden, Syrian Arab Republic, Thailand, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Viet Nam, Zambia.

Against: Guatemala

Abstaining: None

76. The draft resolution, as orally revised, was adopted by 52 votes to 1.

77. Mr. Jakubowski (Poland) resumed the Chair.

Draft resolution on the question of Western Sahara (E/CN.4/2002/L.6)

78. The CHAIRPERSON informed the Commission that the draft resolution had no financial implications.

79. The draft resolution was adopted.

Draft resolution on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (E/CN.4/2002/L.7)

80. Mr. REYES RODRIGUEZ (Cuba), introducing the draft resolution, said that it welcomed the report of the Special Rapporteur on the question of the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination (E/CN.4/2002/20) and reaffirmed that the use of mercenaries and their recruitment, financing and training were a cause of grave concern to all States and violated the purposes and principles of the Charter of the United Nations.

81. The draft resolution urged all States to take all necessary steps and exercise the utmost vigilance against the menace posed by the activities of mercenaries, to take legislative steps to ensure that their territories and territories under their control, as well as their nationals, were not

used for the recruitment, assembly, financing, training and transit of mercenaries. It welcomed the entry into force of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and lastly, requested the Special Rapporteur to report to the Commission on his work.

82. Mr. LEBAKINE (Secretary of the Commission) said that the representatives of Armenia, Cameroon, Costa Rica, Ecuador and Uganda and the observers for the Dominican Republic and El Salvador had become sponsors of the draft resolution, which had no financial implications.

83. Mr. PEREZ VILLANUEVA y TOVAR (Spain), speaking in explanation of vote before the voting on behalf of the States members of the European Union and associated States that were members of the Commission on Human Rights, said that the Union shared many of the concerns expressed in the Special Rapporteur's report. However, as in previous years, it was unable to support the draft resolution because it did not believe that the Commission was the right forum to deal with the problems of mercenary activity. It doubted whether the use of mercenaries should be dealt with primarily as a human rights problem and as a threat to the right of peoples to self-determination. It was of the opinion that the mandate of the Special Rapporteur should be terminated and that the matter of mercenary activity should be considered directly by the General Assembly (Sixth Committee). However, the Union would continue to participate actively, in the appropriate forums, in discussions with interested States on how to curb the threats posed by mercenary activities.

84. At the request of the representative of Spain, a recorded vote was taken on the draft resolution.

In favour: Algeria, Argentina, Armenia, Bahrain, Brazil, Burundi, Cameroon, Chile, China, Costa Rica, Cuba, Democratic Republic of the Congo, Ecuador, India, Indonesia, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Nigeria, Pakistan, Peru, Russian Federation, Senegal, Sierra Leone, South Africa, Sudan, Swaziland, Syrian Arab Republic, Thailand, Togo, Uganda, Uruguay, Venezuela, Viet Nam, Zambia.

Against: Belgium, Canada, Czech Republic, Germany, Japan, Poland, Sweden, United Kingdom of Great Britain and Northern Ireland.

Abstaining: Austria, Croatia, France, Guatemala, Italy, Portugal, Republic of Korea, Saudi Arabia, Spain.

85. The draft resolution was adopted by 36 votes to 8 with 9 abstentions.

86. Ms. GERVAIS-VIDRICAIRE (Canada), said that the activities of private military companies and security services, military consultants and privately hired soldiers raised complex issues of human rights, State sovereignty and humanitarian law. Although her delegation had been pleased to see some recognition of that fact in the resolution, it was disappointed that such complex issues were addressed from a limited perspective which contributed little to the promotion and protection of human rights.

87. Her delegation was particularly concerned at the narrow focus on the self-determination of peoples, believing that all abuses of human rights should be given equal treatment. The term "mercenary" had a legal definition which applied to only a few groups or individuals. Given the growing consensus on the need for a more effective global approach to the issue, her delegation was disappointed that the resolution was so limited in its scope.

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION (agenda item 6) (continued) (E/CN.4/2002/L.9)

Draft resolution on combating defamation of religions (E/CN.4/2002/L.9)

88. Mr. AKRAM (Pakistan), introducing the draft resolution on behalf of the OIC, said that it had been inspired by the campaign to misrepresent and defame Islam and Muslims throughout the world. Since 11 September 2001, that campaign had intensified and Islam had been deliberately associated with terrorism. The war against terrorism had been misused by some to deny people their right to self-determination and freedom, as currently witnessed in Palestine. Similarly, the massacre of hundreds of Muslims in certain countries had not even been mentioned by prime defenders of human rights in the current forum.

89. The resolution reflected the deep concern of Muslim countries and was based on language agreed in the past and additional concepts reflecting new realities. The sponsors of the draft resolution had made some changes to the text in response to suggestions by other delegations. In the ninth preambular paragraph the word "some" had been before "non-Muslim countries". In the tenth preambular paragraph, the words "that the tragic events of 11 September underline" had been deleted.

90. In paragraph 3, the words "to defame Islam, its tenets and values, and Muslim people" should be replaced by the words "on defamation of religions". In paragraph 7, the words "of all religions, in particular" had been added after the words "places of worship". In paragraph 12, the words "the Special Rapporteur on freedom of religion or belief" had been replaced by the words "the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance". He hoped that, with those changes, the draft resolution would be adopted by a large majority.

91. Mr. PEREZ-VILLANUEVA y TOVAR (Spain) thanked the representative of Pakistan for the changes he had made to the draft resolution and requested, on behalf of the European Union, that members should be given some time to consider them. He therefore suggested that the vote on the draft resolution be postponed until a later stage in the day.

92. Mr. AKRAM (Pakistan), speaking on behalf of the OIC, said that, although he had not had the opportunity of consulting the other sponsors, he was sure that they would have no objection to postponing the vote.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (agenda item 8) (continued) (E/CN.4/2002/L.2)

Draft resolution on human rights in the occupied Syrian Golan (E/CN.4/2002/L.2)

93. Mr. SALLOUM (Syrian Arab Republic), introducing the draft resolution, said that his delegation was submitting it once again because Israeli occupation of the Golan continued, as it had done since 1967, in violation of human rights and international resolutions, depriving the people of the Golan of medical assistance and the right to travel or visit their families and imposing upon them the Hebrew language and even Israeli identity cards. Military occupation by one State of another independent sovereign State, or even a part of it, was unacceptable and his delegation hoped that the draft resolution would receive overwhelming support.

94. Mr. LEBAKINE (Secretary of the Commission) said that the representatives of Malaysia and Togo had become sponsors of the draft resolution, which had no administrative or financial implications.

95. Ms. GERVAIS-VIDRICAIRE (Canada), speaking in explanation of vote before the voting, said that, while there were some elements of the draft resolution which her delegation agreed with, there were others it could not support. Her delegation acknowledged that the Golan Heights were occupied territories and did not recognize permanent Israeli control over the territories it had occupied in 1967. It also supported the concept that the peace process had to be based on Security Council resolutions 242 (1967) and 338 (1973). However, the draft resolution did not provide the full context or a balanced assessment of the situation in the region and her delegation would therefore abstain.

96. Mr. LEVY (Observer for Israel) said that Israel had come into possession of the Golan Heights in self-defence in a war initiated by neighbouring Arab countries, including Syria, which had lost the war and, consequently, lost the territory. In recent years, his Government had been negotiating with the Syrians to reach a peaceful solution to outstanding problems and had, at one point, been very close to an agreement, but Syria had rejected its proposals. Israel was still committed to negotiating a peace settlement with Syria and the Commission's adoption of a resolution on the issue would prejudge the outcome of those negotiations and create a disincentive for the Syrians to return to the negotiating table.

97. Mr. ARENALES FORNO (Guatemala), said that Security Council resolutions 242 (1967) and 338 (1973) called for the recognition of Israel's right to exist within internationally recognized safe borders. However, despite Israel's internationally recognized right to exist there seemed to be a numbers of States intent on seeking its destruction. Consequently, only after the recognition and negotiation of secure borders between Israel and its neighbours as part of an international solution guaranteeing Israel's security would it be possible for Israel to adhere to the contents of the draft resolution regarding territory. His delegation would thus be voting against the resolution.

98. Mr. SALLOUM (Syrian Arab Republic), said that, once again, the observer for Israel had distorted the truth. He had asserted that Syria had attacked Israel and lost the war but there were hundreds of books stating who had launched the attack and it was also quite clear from the

memoirs of Moshe Dayan, the Israeli Minister of Defence at the time, who had attacked first. The observer for Israel was also distorting the facts when he said that Syria and Israel had been on the point of reaching agreement but that Syria had rejected the proposals - it was Israel that had rejected the agreement.

99. The leaders of Israel had been pursuing a policy of human rights violations for a very long time. It had begun in 1948 when they had assassinated Count Bernadotte, the Swedish mediator who had had been trying to find a peaceful solution to the conflict. There had been many other instances of unarmed people being killed because they had spoken out for peace or presented ideas for avoiding bloodshed. Even Israeli peacemakers had been killed, such as Prime Minister Yitzhak Rabin.

100. The only way to end the bloodshed was for Israel to withdraw behind the borders of 4 June 1967. Israeli violations in the Syrian Golan were clear from the reports of the special rapporteurs. Israel had done nothing to improve the human rights situation of the Golan population - it prevented them from meeting their families, deprived them of their history and imposed Israeli identity on them - in defiance of international law. Security Council resolution 242 (1967) called for Israel's withdrawal. If, on behalf of the Israeli leadership, the observer for Israel was able to say that its forces were prepared to withdraw, that would save a great deal of time for the Commission to devote to other issues. He urged the Commission to adopt the proposed draft resolution and to put an end to the Israeli occupation of the Syrian Golan.

101. At the request of the representative of Canada, a recorded vote was taken on the draft resolution.

In favour: Algeria, Argentina, Armenia, Bahrain, Burundi, Cameroon, Chile, China, Cuba, Democratic Republic of the Congo, Ecuador, India, Indonesia, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Nigeria, Pakistan, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Sierra Leone, South Africa, Sudan, Swaziland, Syrian Arab Republic, Thailand, Togo, Uganda, Venezuela, Viet Nam, Zambia.

Against: Guatemala.

Abstaining: Austria, Belgium, Brazil, Canada, Costa Rica, Croatia, Czech Republic, France, Germany, Italy, Japan, Peru, Poland, Portugal, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, Uruguay.

102. The draft resolution was adopted by 34 votes to 1 with 18 abstentions.

The meeting rose at 1 p.m.